

THE
REVISED LAWS

OF

The Commonwealth of Massachusetts.

ENACTED NOVEMBER 21, 1901,

TO TAKE EFFECT JANUARY 1, 1902.

WITH THE

CONSTITUTION OF THE UNITED STATES, THE CONSTITUTION OF THE
COMMONWEALTH, AND TABLES SHOWING THE DISPOSITION
OF THE PUBLIC STATUTES AND OF STATUTES
PASSED SINCE THE ENACTMENT OF
THE PUBLIC STATUTES.

PART II.

CHAPTERS 127 TO 227 AND INDEX.



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PART II.

OF REAL AND PERSONAL PROPERTY AND THE DOMESTIC RELATIONS.

TITLE I.

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CHAPTER 127.

OF THE ALIENATION OF LAND.

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CONVEYANCE BY DEED.

- 1 SECTION 1. A deed which is executed and delivered by the per-
2 son, or by the attorney of the person, who has authority therefor
3 shall, subject to the limitations of section four, be sufficient, with-
4 out any other act or ceremony, to convey land.
- 12 Met. 157. 13 Met. 79. 16 Gray, 309. 14 Pick. 224. 137 Mass. 584.
- Conveyance of
land by deed.
1697, 21, § 1.
1783, 37, § 4.
R. S. 59, § 1.
G. S. 89, § 1.
P. S. 120, § 1.

Effect of quit-claim deed.
R. S. 59, § 5.
G. S. 89, § 8.
P. S. 120, § 2.

SECTION 2. A deed of quit-claim and release shall be sufficient to convey all the estate which could lawfully be conveyed by a deed of bargain and sale.

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8 Pick. 143.

15 Pick. 82.

131 Mass. 200.

168 Mass. 203.

Estate created without writing to have effect of estate at will.
C. L. 32, § 1.
1692-3, 15, § 1.
1783, 37, § 1.
R. S. 59, § 29.

SECTION 3. An estate or interest in land which is created without an instrument in writing signed by the grantor or by his attorney shall have the force and effect of an estate at will only, and no estate or interest in land shall be assigned, granted or surrendered unless by such writing or by operation of law.

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G. S. 89, § 2.
P. S. 120, § 3.

1 Pick. 43.
9 Met. 462.

11 Met. 251.
1 Gray, 571.

4 Allen, 80.
117 Mass. 351.

150 Mass. 19.
171 Mass. 336.

Effect of unrecorded deeds.
C. L. 32, § 4.
1697, 21, § 2.
1783, 37, § 4.
R. S. 59, §§ 1, 28.
G. S. 89, §§ 1, 3.
P. S. 120, § 4.
15 Mass. 439.
13 Pick. 460.
22 Pick. 295.

SECTION 4. A conveyance of an estate in fee simple, fee tail or for life, or a lease for more than seven years from the making thereof, shall not be valid as against any person, except the grantor or lessor, his heirs and devisees and persons having actual notice of it, unless it, or an office copy as provided in section fifteen of chapter twenty-two, is recorded in the registry of deeds for the county or district in which the land to which it relates is situated.

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23 Pick. 80.
24 Pick. 221.
1 Met. 212.
2 Met. 619.
12 Met. 17, 157.
6 Cush. 163.
9 Gray, 306.

2 Allen, 115.
3 Allen, 487.
7 Allen, 16.
8 Allen, 584.
9 Allen, 80.
12 Allen, 472.
99 Mass. 248.

101 Mass. 444.
103 Mass. 491.
113 Mass. 72.
129 Mass. 210.
130 Mass. 85.
131 Mass. 510.
132 Mass. 320.

140 Mass. 112.
146 Mass. 610.
149 Mass. 310.
162 Mass. 108, 473.
167 Mass. 443.
168 Mass. 118.

Record to be evidence of delivery.
1892, 256.
161 Mass. 381.

SECTION 5. The record of a deed, lease, power of attorney or other instrument, duly acknowledged or proved as hereinafter provided and purporting to affect the title to land, shall be conclusive evidence of the delivery of such instrument, in favor of purchasers for value without notice who claim thereunder.

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Effect of conveyance by disseisin.
1891, 354.
101 Mass. 179.
172 Mass. 395.
175 Mass. 355.

SECTION 6. A conveyance of land, if otherwise valid, shall, notwithstanding disseisin or adverse possession, be as effectual to transfer the title as if the grantor were actually seised and possessed of such land, and shall vest in the grantee the rights of entry and of action for recovery of the estate incident to such title.

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ACKNOWLEDGMENT AND RECORDING OF DEEDS.

Acknowledgment of deed before record.
C. L. 32, § 4.
1697, 21, § 1.
1783, 37, § 4.
R. S. 59, § 22.
G. S. 89, § 28.
1869, 167.
P. S. 120, § 5.
4 Mass. 541.

SECTION 7. No deed shall be recorded unless a certificate of its acknowledgment or of the proof of its due execution, made as hereinafter provided, is indorsed upon or annexed to it, and such certificate shall be recorded at length with the deed to which it relates; but the provisions of this section shall not apply to conveyances from the United States.

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10 Pick. 72.

22 Pick. 85.

23 Pick. 80.

2 Cush. 494.

174 Mass. 292.

Acknowledgment, how made.
1783, 37, § 4.
1829, 125, § 1.
R. S. 59, §§ 12, 13, 22.
1856, 253, § 1.
G. S. 89, §§ 18, 19, 28.
1867, 250, § 1.
1875, 142.
P. S. 120, § 6.

SECTION 8. The acknowledgment of a deed shall be by the grantors or one of them, or by the attorney who executes the deed, and, if made in this commonwealth, shall be made before a justice of the peace or notary public: if made elsewhere in the United States, before a justice of the peace, notary public, magistrate or commissioner appointed for the purpose by the governor of this commonwealth; and, if in a foreign country, before such a justice,

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8 notary, magistrate or commissioner, or before an ambassador, min-
9 ister or consul of the United States or a consular officer of the
10 United States accredited to such country. The officer before
11 whom an acknowledgment is made shall indorse upon or annex to
12 the deed a certificate of such acknowledgment.

6 Pick. 86.
13 Pick. 529.
11 Cush. 147.
9 Gray, 56.
14 Allen, 109.
165 Mass. 359.

1 SECTION 9. The acknowledgment by a married woman may be
2 taken in the same form as if she were sole, and without any exami-
3 nation separate and apart from her husband.

Acknowledg-
ment by
married
woman.
1894, 253, § 2.

1 SECTION 10. If a grantor dies or removes from this common-
2 wealth without having acknowledged his deed, the due execution
3 thereof may be proved before any court of record in this common-
4 wealth by the testimony of a subscribing witness thereto.

Proof of execu-
tion, if grantor
is dead or non-
resident.
1697, 21, § 2.
1783, 37, § 4.
R. S. 59, § 14.

G. S. 89, § 20

P. S. 120, § 7.

1 Mass. 58.

174 Mass. 292.

1 SECTION 11. If all the subscribing witnesses to the deed are also
2 dead or out of this commonwealth, the due execution thereof may be
3 proved before such court by proving the handwriting of the grantor
4 and of a subscribing witness. G. S. 89, § 21. P. S. 120, § 8. 8 Met. 355.

— If the wit-
nesses are
dead or non-
resident.
1787, 5.
R. S. 59, § 15.

1 SECTION 12. If a grantor refuses to acknowledge his deed, the
2 grantee or any person who claims under him may apply to a court
3 of record in the county in which the land lies, or in which the
4 grantor or a subscribing witness to the deed resides, and such court
5 shall thereupon issue a summons to the grantor to appear at a certain
6 time and place to hear the testimony of the subscribing witnesses.
7 Such summons, with a copy of the deed annexed, shall be served
8 seven days at least before the time therein assigned for proving the
9 deed, and at such hearing the due execution of the deed may be
10 proved by the testimony of one or more of the subscribing wit-
11 nesses.

— If the
grantor re-
fuses to ac-
knowledge.
C. L. 32, § 4.
1697, 21, § 3.
1783, 37, § 5.
R. S. 59, §§ 16,
17.
G. S. 89, §§ 22,
23.
P. S. 120, § 9.

1 SECTION 13. If a grantor refuses to acknowledge his deed and
2 the subscribing witnesses to such deed are all dead or out of this
3 commonwealth, the execution thereof may be proved before any
4 court of record in this commonwealth by proving the handwriting
5 of the grantor and of a subscribing witness, the court first summon-
6 ing the grantor for the purpose and in the manner provided in the
7 preceding section.

— If the wit-
nesses are
dead or non-
resident.
R. S. 59, § 18.
G. S. 89, § 24.
P. S. 120, § 10.

1 SECTION 14. A person who is interested in a deed which has not
2 been acknowledged may, before or during proceedings before a
3 court for proof of the execution thereof, file in the proper registry
4 of deeds a copy of such deed, compared with the original by the
5 register; and the filing of such copy shall, for thirty days thereafter,
6 have the same effect as the recording of the deed, if the deed is
7 within that time duly proved and recorded: or if, at the expiration
8 of said thirty days, such proceedings are pending, the effect of filing
9 such copy shall continue until the expiration of seven days after the
10 termination of such proceedings.

Copy of deed
not acknowl-
edged may be
filed in registry
of deeds.
C. L. 32, § 4.
1697, 21, § 3.
1783, 37, § 5.
R. S. 59, §§ 19,
20.
G. S. 89, §§ 25,
26.
P. S. 120, § 11.

1 SECTION 15. The execution of a deed shall not be proved in the
2 manner before provided unless it has at least one subscribing wit-
3 ness. G. S. 89, § 27. P. S. 120, § 12.

Deed without
witness not to
be proved.
R. S. 59, § 21.

Indorsement
of certificate.
1783, 37, § 5.
R. S. 39, §§ 17,
22.
G. S. 89, §§ 23,
28.
P. S. 120, § 13.

SECTION 16. A certificate of the proof of the execution of a deed shall be indorsed upon or annexed to the deed by the clerk or register of the court or by the judge before whom such proof is made, and the certificate shall state whether the grantor was present at the hearing.

Powers of
attorney to
convey real
estate.
1849, 205.

SECTION 17. The provisions of law relative to the acknowledgment and recording of deeds shall apply to letters of attorney for the conveyance of real estate.

G. S. 89, § 29.

1879, 86.

P. S. 120, § 14.

22 Pick. 85.

Forms of ac-
knowledg-
ment.
1894, 253, § 1.

SECTION 18. The following forms of acknowledgment of conveyances or of other written instruments may be used: (Caption specifying the state and place where the acknowledgment is taken.)
1. Acknowledgment of a natural person acting in his own right: On this day of 19 , before me personally appeared A B (or A B and C D), to me known to be the person (or persons) described in and who executed the foregoing instrument, and acknowledged that he (or they) executed the same as his (or their) free act and deed. 2. Acknowledgment of a natural person acting by attorney: On this day of 19 , before me personally appeared A B, to me known to be the person who executed the foregoing instrument in behalf of C D, and acknowledged that he executed the same as the free act and deed of said C D. 3. Acknowledgment of a corporation or joint stock association: On this day of 19 , before me appeared A B, to me personally known, who, being by me duly sworn (or affirmed), did say that he is the president (or other officer or agent of the corporation or association) of (describing the corporation or association) and that the seal affixed to said instrument is the corporate seal of said corporation (or association), and that said instrument was signed and sealed in behalf of said corporation (or association) by authority of its board of directors (or trustees), and said A B acknowledged said instrument to be the free act and deed of said corporation (or association). If the corporation or association has no corporate seal, the words "the seal affixed to said instrument is the corporate seal of said corporation (or association), and that" shall be omitted, and at the end of the affidavit shall be added the words "and that said corporation (or association) has no corporate seal". (Signature and title of the officer taking the acknowledgment.)

Proof or
acknowledg-
ment of deed,
etc., in other
states or terri-
tories.
1894, 253, § 3.

SECTION 19. The proof or acknowledgment of a deed or other written instrument which is required to be proved or acknowledged in order to be entitled to be recorded or to be admitted in evidence, if made in another state may be made before any officer of such state who is authorized by the laws thereof to take the proof and acknowledgment of deeds, and, if taken and certified as herein provided, shall be entitled to be recorded in this commonwealth and may be admitted in evidence in the same manner and with like effect as proofs and acknowledgments which are taken before any of the officers named in section eight.

Certificate of
officer to be
attached to

SECTION 20. In order to entitle any conveyance or written instrument which has been acknowledged or proved under the provi-

sions of the preceding section to be admitted in evidence or recorded in this commonwealth, there shall be subjoined or attached to the certificate of proof or acknowledgment, signed by such officer, a certificate of the secretary of state of the state in which such officer resides, under the seal of such state, or a certificate of the clerk of a court of record of such state in the county in which said officer resides or in which he took such proof or acknowledgment, under the seal of the court, stating that such officer was, at the time of taking such proof or acknowledgment, duly authorized thereto in said state, and that said secretary of state or clerk of court is well acquainted with his handwriting and verily believes that the signature affixed to such certificate of proof or acknowledgment is genuine.

conveyance,
etc.
1894, 253, § 4.

SECTION 21. The following form of authentication of the proof or acknowledgment of a deed or other written instrument, if taken in any other state, or any form substantially in compliance with the provisions of the three preceding sections, may be used: (Caption specifying the state, county or place where the authentication is made.) I, _____, clerk of the _____ in and for said county, which court is a court of record having a seal, (or, I, _____, the secretary of state of such state or territory) do hereby certify that _____, by and before whom the foregoing acknowledgment (or proof) was taken, was, at the time of taking the same, a notary public (or other officer) residing (or authorized to act) in said county, and was duly authorized by the laws of said state (territory or district), to take and certify acknowledgments or proofs of deeds of land in said state (territory or district), and further that I am well acquainted with the handwriting of said _____, and that I verily believe that the signature to said certificate of acknowledgment (or proof) is genuine. In testimony whereof, I have hereunto set my hand and affixed the seal of the said court (or state) this _____ day of _____, 19____.

Form of authentication
of deeds
acknowledged
in other states.
1894, 253, § 5.

SECTION 22. The proof or acknowledgment of a deed or other instrument which is required to be proved or acknowledged in order to be entitled to be recorded or to be admitted in evidence, if made without the United States, may be made before any officer named in section eight or before any ambassador, minister, consul, vice-consul, chargé d'affaires or consular agent of the United States, resident in any foreign country or port, and when certified by him under his seal of office it may be recorded in this commonwealth and admitted in evidence in any court in this commonwealth in the same manner and with like effect as if duly proved or acknowledged within this commonwealth.

Acknowledgment of deeds,
without the
United States.
1894, 253, § 6.

SECTION 23. The provisions of the five preceding sections shall not prevent the acknowledgment of conveyances or other written instruments in any form and manner heretofore lawfully used, nor the recording thereof if so acknowledged, nor require formalities other than those heretofore required.

Effect of preceding sections.
1895, 460.

BARRING OF ESTATES TAIL.

Tenant in tail
may convey in
fee simple.
1791, 60, § 1.
R. S. 59, § 3.
G. S. 89, § 4.

SECTION 24. A person seised of land as tenant in tail may convey such land in fee simple by a deed in common form, as if he were seised thereof in fee simple; and such conveyance shall bar the estate tail and all remainders and reversions expectant thereon.

P. S. 120, § 15. 15 Pick. 104. 5 Gray, 523. 90 Mass. 264. 138 Mass. 376. 158 Mass. 74.
9 Mass. 161. 3 Gray, 162. 4 Allen, 477. 102 Mass. 262. 147 Mass. 17. 159 Mass. 4.

Life tenant
and remainder
man in tail
may convey in
fee simple.
1804, 59.
R. S. 59, § 4.
G. S. 89, § 5.
P. S. 120, § 16.

SECTION 25. If land is held by one person for life with a vested remainder in tail in another, the tenant for life and the remainder man may convey such land in fee simple by their deed or deeds in common form, as if the remainder had been limited in fee simple; and such deed or deeds shall bar the estate tail and all remainders and reversions expectant thereon.

Barring of
equitable
estates tail.
1851, 14, § 1.
G. S. 89, § 6.
P. S. 120, § 17.

SECTION 26. Equitable estates tail, in possession or remainder, and all remainders and reversions expectant thereon, may be barred in the same manner as legal estates tail and the remainders and reversions expectant thereon.

Trustee may
be required to
convey legal
estate.
1851, 14, § 2.
G. S. 89, § 7.
P. S. 120, § 18.

SECTION 27. The person to whom an equitable fee simple is conveyed pursuant to the preceding section shall, upon request therefor, be entitled to a conveyance of the outstanding legal estate from the person in whom such legal estate is then or thereafter vested in trust.

CONVEYANCE OF ESTATES SUBJECT TO REMAINDERS, ETC.

Sale of land
subject to con-
tingent re-
mainder, etc.
1868, 287, §§ 1, 2.
1869, 331.
1871, 322, §§ 1-3.
1873, 280, § 2.
P. S. 120, § 19.
122 Mass. 243.
123 Mass. 280.
133 Mass. 308.

SECTION 28. If land is subject to a contingent remainder, executory devise or power of appointment, the probate court for the county in which such land is situated may, upon the petition of any person who has an estate in possession of such land, and after notice and other proceedings as hereinafter required, appoint one or more trustees and authorize him or them to sell and convey such land or any part thereof in fee simple, if such sale and conveyance appears to the court to be necessary or expedient, or to mortgage the same, either with or without a power of sale, for such an amount, on such terms and for such purposes as may seem to the court judicious or expedient; and such conveyance or mortgage shall be valid and binding upon all parties.

— of estates
subject to
vested re-
mainder.
1895, 183, § 1.
1897, 136.

SECTION 29. If land is subject to a vested remainder or reversion, the probate court for the county in which such land is situated may, upon the petition of any person who has either an estate in possession or the remainder or reversion in such land, and after notice and other proceedings as hereinafter required, appoint one or more trustees and authorize him or them to sell and convey such land, or any part thereof, in fee simple, if such sale and conveyance appear to the court to be necessary or expedient; and such conveyance shall be valid and binding upon all persons.

Proceedings on
such petition.
1868, 287, § 2.
1871, 322, § 2.
P. S. 120, § 20.
1895, 183, § 2.
161 Mass. 315.

SECTION 30. Notice of a petition under the provisions of the two preceding sections shall be given, in such manner as the court may order, to all persons who are or who may become interested in the land to which the petition relates, and to all persons whose

5 issue, not in being, may become interested therein; and the court
6 shall of its own motion in every case appoint a suitable person
7 to appear and act therein as the next friend of all minors, persons
8 not ascertained, and persons not in being, who are or may become
9 interested in such land; and the provisions of sections twenty-three
10 and twenty-four of chapter one hundred and forty-five, which are
11 not inconsistent herewith, shall apply in the case of such appoint-
12 ment.

1 SECTION 31. A trustee who is appointed under the provisions
2 of section twenty-eight or twenty-nine shall give bond in such form
3 and for such amount as the court appointing him may order, and
4 he shall receive and hold, invest or apply the proceeds of any sale
5 or mortgage made by him for the benefit of the persons who would
6 have been entitled to the land if such sale or mortgage had not been
7 made, and the probate court of any county in which any part of
8 such land is situated shall have jurisdiction of all matters thereafter
9 arising relative to such trust.

Bond, duties,
etc., of trustees
making the
sale or
mortgage.
1868, 287, §§ 1, 3.
1871, 322, § 1.
P. S. 120, § 21.
1895, 183, § 2.

1 SECTION 32. If land is charged with the payment of money,
2 either in fixed amounts or in annuities for a life or lives or for years,
3 the supreme judicial court shall have jurisdiction in equity in the
4 county in which any part of such land is situated, upon the petition
5 of the persons holding title thereto subject to the charge of such
6 payment, and after notice and a hearing, to authorize them to sell
7 and to convey by private sale or public auction the whole or any
8 portion of such land in fee simple and free from such charges,
9 whether present or future, certain or contingent, and the court shall
10 in such case provide by its decree for the payment of the amounts
11 charged upon such land by placing the whole or any portion of the
12 proceeds of the sale thereof in the hands of a trustee to be appointed
13 by it, by the purchase of annuities for the persons entitled to
14 receive the amounts so charged, or by any other means which shall
15 be considered just and reasonable. Such trustees shall give bond
16 in such sum as the court may order, shall, under the direction of
17 the court, manage and account for the trust fund and shall distrib-
18 ute the income thereof according to its decree.

Sale of land
subject to
charges for
payment of
annuities, etc.
1879, 125, §§ 1, 2.
P. S. 120, § 22.

INSTRUMENTS OF DEFEASANCE.

1 SECTION 33. If a deed purports to contain an absolute con-
2 veyance of land, but is made defeasible by a deed, bond or other
3 instrument, the original deed shall not be thereby affected, as
4 against any person other than the maker of the instrument of defeas-
5 ance and his heirs and devisees and persons having actual notice of
6 it, unless such instrument is recorded in the registry of deeds for
7 the county or district in which the land to which it relates is
8 situated.

Effect of un-
recorded
instruments
of defeasance.
1802, 33.
R. S. 59, § 27.
G. S. 89, § 15.
P. S. 120, § 23.
5 Pick. 450.
7 Pick. 156.
2 Cush. 494.
6 Cush. 170.
5 Gray, 505.

145 Mass. 389.

DISCHARGE OF MORTGAGES.

1 SECTION 34. A mortgage may be discharged by an entry ac-
2 knowledging the satisfaction thereof, made on the margin of the record
3 of the mortgage in the registry of deeds and signed by the mort-

Mortgages,
how dis-
charged.
1697, 21, § 4.
1783, 37, § 6.

R. S. 59, § 33.
G. S. 89, § 30.
1870, 171.
P. S. 120, §§ 24,
26.
s Allen, 165.
134 Mass. 580.

gagee, or by his executor, administrator or assignee, and such entry shall have the same effect as a deed of release duly acknowledged and recorded. One of two or more joint holders of a mortgage may so discharge it, or he may discharge it by a deed of release duly acknowledged and recorded.

Mortgagee
liable for
refusing to
discharge.
1697, 21, § 4.
1783, 37, § 6.
R. S. 59, § 34.
G. S. 89, § 31.
P. S. 120, § 25.

SECTION 35. If a mortgagee, or his executor, administrator or assignee, after full performance of the condition of his mortgage, whether before or after breach of such condition, refuses or neglects for seven days after request therefor and after a tender of his reasonable charges, to make such discharge or to execute and acknowledge a deed of release of the mortgage, he shall be liable in an action of tort for all damages caused by such neglect or refusal.

CHAPTER 128.

OF THE REGISTRATION AND CONFIRMATION OF TITLES TO LAND.

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COURT OF LAND REGISTRATION.

Court of land
registration.
1898, 562, § 2.
1899, 131, § 1.
1900, 334, § 1.
175 Mass. 71.
179 U. S. 405.

SECTION 1. The court of land registration shall be a court of record and shall have exclusive original jurisdiction of all applications for the registration of title to land within the commonwealth, with power to hear and determine all questions arising upon such applications, and of such other questions as may come before it under the provisions of this chapter, subject to the right of appeal,

7 as hereinafter provided. The proceedings upon such applications
8 shall be proceedings in rem against the land, and the decrees shall
9 operate directly on the land and vest and establish title thereto.

10 The court shall hold its sittings in Boston, but may adjourn from
11 time to time to such other places as the public convenience may
12 require. In the county of Suffolk, the board of aldermen of the
13 city of Boston, and in other counties, the county commissioners,
14 shall provide suitable rooms for the sittings of said court in the
15 same building with, or convenient to, the probate court or the
16 registry of deeds, and shall provide all necessary books and such
17 printed blanks and stationery for use in registration proceedings as
18 the court may order.

19 The court shall have jurisdiction throughout the commonwealth,
20 shall always be open, except on Sundays and legal holidays, and
21 shall have a seal with which all orders, processes and papers made
22 by or proceeding from the court and requiring a seal shall be
23 sealed. Notices, orders and processes of said court may run into
24 any county and be returnable as the court directs.

25 The court shall from time to time make general rules and forms
26 for procedure, conforming as nearly as may be to the practice in
27 the probate courts. Such rules and forms, before taking effect,
28 shall be approved by the supreme judicial court or by a justice
29 thereof.

1 SECTION 2. There shall be two judges of the court, one of whom
2 shall be appointed, commissioned and qualified as judge of land
3 registration and the other as associate judge of land registration.

1898, 562, § 3.

1900, 354, § 1.

Court of land
registration,
judges of.
Const., c. 2, § 1,
art. 9; c. 3, art.
1.

1 SECTION 3. The court may be held by one judge and simul-
2 taneous sessions may be held, either in the same county or in
3 different counties, and shall be so arranged as to insure a prompt
4 discharge of the business of the court.

— sessions.
1898, 562, § 4.

1 SECTION 4. Processes issuing from the court shall bear teste of
2 the judge of land registration, shall be under the seal of the court
3 and be signed by the recorder.

— citations.
1898, 562, § 5.

1 SECTION 5. In case of a vacancy in the office of judge of land
2 registration, or of his interest, absence or inability to perform his
3 duties, the associate judge shall perform them.

— associate
judge of, to act,
when.
1898, 562, § 6.

1 SECTION 6. The governor, with the advice and consent of the
2 council, shall appoint a recorder, who shall be clerk of the court
3 and who shall hold his office for the term of five years. He shall
4 attend the sessions of the court and keep a docket of all causes,
5 and shall affix the seal of the court to all processes or papers which
6 require a seal.

— recorder of.
1898, 562, § 7.

1 SECTION 7. The recorder shall be under the direction of the
2 court, shall have the custody and control of all papers and docu-
3 ments filed with him under the provisions of this chapter and shall

— duties and
powers of
recorder of.
1898, 562, § 8.

carefully number and index them. Said papers and documents shall be kept in Boston in the land registration office, which shall be near the court of land registration. The recorder may, with the sanction of the court, employ such assistants and messengers as may be necessary.

Recorder to act
in any county.
1898, 562, § 9.

SECTION 8. The recorder may act in any county, and after land has been registered, he may make all memoranda affecting the title and enter and issue certificates of title as herein provided.

Register of
deeds, duties
of.
1898, 562, § 10.

SECTION 9. The register of deeds in each district in which land has been registered shall have the same authority as the recorder to make all memoranda affecting the title of such land, and to enter and issue new certificates of title as herein provided, and to affix the seal of the court to such certificates and duplicate certificates of title; but in executing the provisions of this chapter, registers of deeds shall be subject to the general direction of the recorder, in order to secure uniformity throughout the commonwealth; and, in the performance of their duties under the provisions of this chapter, the official designation of registers of deeds shall be assistant recorders for their respective registry districts. In case of the death or disability of the recorder, the assistant recorder for the Suffolk district shall perform the duties of the recorder.

Oath and bond
of recorder.
1898, 562, § 11.

SECTION 10. The recorder and all assistant recorders shall be sworn before the judge of land registration, and a record thereof shall be made. They shall give bond in a sum to be fixed by the court, for the faithful performance of their official duties, before entering upon the same. They may administer oaths to persons who appear before them in matters pertaining to the registration of land, if an oath is required. They shall keep accurate accounts of all money received as fees or otherwise, which shall be subject to examination by the controller of county accounts, in the same manner as accounts of registers of deeds, and they shall, except as provided in section twelve, pay over such money quarterly to the treasurer and receiver general. In case of the absence of an assistant recorder, the assistant register for the district, or if there is no assistant register, the person acting as clerk in the office of the register of deeds, shall perform the duties of the assistant recorder, and the assistant recorder shall be responsible for him.

Examiners of
title.
1898, 562, § 12.

SECTION 11. The judge of land registration may appoint one or more examiners of title in each county, who shall be attorneys at law and who shall be subject to removal by the supreme judicial court.

Salaries and
expenses of
judge, etc.
1898, 562, § 13.
1900, 354, § 2.

SECTION 12. The salary of the judge of land registration shall be forty-five hundred dollars a year and the salary of the associate judge of land registration shall be four thousand dollars a year. The salaries of the recorder, assistant recorders, examiners of titles and all assistants and messengers shall be fixed by the governor and council. All salaries and expenses of the court shall be paid by the

7 commonwealth, except the salaries of the assistant recorders and
8 the expenses incurred by them under the provisions of this chapter,
9 which shall be paid by the respective counties. All fees collected
10 by the assistant recorders, except those received upon the filing of
11 applications, which shall be transmitted with the applications to the
12 recorder, shall be paid to their respective counties.

1 SECTION 13. Every order, decision and decree of the court shall
2 be subject to appeal to the superior court for the county in which
3 the land lies, to which such order, decision or decree relates. The
4 appeal shall be claimed and entered within thirty days after the date
5 of such order, decision or decree, and upon the entry of the appeal
6 the appellant shall file in the superior court copies of all material
7 papers in the case, certified by the recorder. Appearances and
8 answers shall be filed in the superior court within thirty days after
9 the appeal has been entered, unless for good cause further time is
10 allowed. Upon the motion of either party, the cause shall be ad-
11 vanced for speedy hearing, and shall be tried by the court, unless
12 either party within the time allowed for entering appearance claims a
13 trial by jury. In such case, issues for the jury shall be framed.
14 Questions of law arising in the superior court may be taken to the
15 supreme judicial court for revision by any party aggrieved by any
16 opinion, ruling, direction or judgment of the court, in the same
17 manner as in proceedings at law in said court.

Appeals to
superior court
1898, 562, § 14.
1899, 131, § 2.
175 Mass. 68.

18 Questions of law arising in the court of land registration on any
19 decision or decree may be taken by any party direct to the supreme
20 judicial court for revision, in the same manner as questions of law
21 are taken to that court from the superior court. The court of land
22 registration, after any decision or decree dependent upon a question
23 of law, may report such decision or decree, with so much of the
24 case as is necessary for understanding such questions of law, for
25 the determination of the supreme judicial court.

1 SECTION 14. The clerk of the supreme judicial court or of the
2 superior court shall, upon the determination of proceedings pend-
3 ing therein, certify to the court of land registration the final deci-
4 sion, and the court of land registration shall enter the final decree
5 in the cause, in accordance with the certificate.

Certification of
decision of ap-
pellate court.
1898, 562, § 15.
1899, 131, § 3.

1 SECTION 15. If the appellant does not duly prosecute his appeal
2 within the time limited, the original order, decision or decree shall
3 stand as if no appeal had been taken.

Failure to
prosecute
appeal.
1898, 562, § 16.

1 SECTION 16. The court of land registration may enforce its
2 orders or decrees in all matters over which it has jurisdiction in
3 the same manner as decrees are enforced in equity and, upon the
4 request of the judge of land registration, the sheriff of any county
5 shall assign a deputy to attend the sittings of the court in that
6 county.

Enforcement
of decrees.
1898, 562, § 17.

1 SECTION 17. Costs shall be taxed and the collection enforced as
2 in the superior court sitting in equity, unless a different provision
3 is made.

Costs.
1898, 562, § 18.

ORIGINAL REGISTRATION.

Application
for registra-
tion.
1898, 562, § 19.
1900, 354, § 3.

SECTION 18. Application for registration of title may be made by the following persons:—

First, The person or persons who claim, singly or collectively, to own the legal estate in fee simple.

Second, The person or persons who claim, singly or collectively, to have the power of appointing or disposing of the legal estate in fee simple.

Third, Infants and other persons under disability, by their legally appointed guardians; but the person in whose behalf the application is made shall be named as applicant.

Fourth, Corporations, by any officer duly authorized by a vote of the directors.

One or more tenants for a term of years, which is regarded as a fee simple in section one of chapter one hundred and twenty-nine, shall not make application except jointly with those who claim the reversionary interest which makes up the fee simple at common law; nor shall a mortgagor, except as hereinafter provided, make application without the consent in writing of the mortgagee; nor shall a married woman make application without the consent in writing of her husband, unless she holds the land as her separate property or has a power to appoint the land in fee simple, or is living apart from her husband for a justifiable cause which has been established by a decree of court; nor shall one or more tenants who claim undivided shares less than a fee simple in the whole land described in the application make application for registration. If the holder of a mortgage does not consent to the making of the application, it may be entered nevertheless, and the title registered, subject to the mortgage, which may be dealt with or foreclosed as if the land subject to it had not been registered. The decree of registration in such case shall describe the mortgage, and shall state that it has not been registered and that registration is made subject to it, and shall provide that no subsequent certificate shall be issued and no further papers registered relative to such land after a foreclosure of such mortgage.

Record of
memorandum
of application.
1898, 562, § 20.
1899, 131, § 4.

SECTION 19. The application may be filed with the recorder, or with the assistant recorder at the registry of deeds for the district in which the land, or any portion thereof, lies. Upon filing his application, the applicant shall forthwith cause to be filed in the registry of deeds for the said district or districts a memorandum stating that application for registration has been filed, the date and place of filing and a copy of the description of the land contained in the application. Such memorandum shall be recorded and indexed by the register with the records of deeds. Each assistant recorder shall also keep an index of all applications in his district, and in every case in which the application is filed with him shall transmit the application, the papers and plans filed therewith and such memorandum, when recorded, to the recorder.

Form and con-
tents of appli-
cation.
1898, 562, § 21.

SECTION 20. The application shall be in writing, signed and sworn to by the applicant or by a person duly authorized in his behalf. If there is more than one applicant, the application shall

4 be signed and sworn to by or in behalf of each. It shall contain a
 5 description of the land, and shall state whether the applicant is mar-
 6 ried; and if married, the name of the wife or husband; and if un-
 7 married, whether he or she has been married, and if so, when and
 8 how the marriage relation terminated; and if by divorce, when,
 9 where and by what court the divorce was granted. It shall also
 10 state the name in full and the address of the applicant, and the names
 11 and addresses of the adjoining owners and occupants, if known; and
 12 if not known, it shall state what search has been made to find them.
 13 It may be in form as follows:

COMMONWEALTH OF MASSACHUSETTS.

To the Honorable the Judge of the Court of Land Registration.

I (or we) the undersigned, hereby apply to have the land hereinafter described brought under the operation and provisions of chapter one hundred and twenty-eight of the Revised Laws relative to the registration and confirmation of titles to land, and to have my (or our) title therein registered and confirmed. And I (or we) declare: (1) That I am (or we are) the owner (or owners) in fee simple of a certain parcel of land with the buildings (if any, and if not, strike out the clause), situate in (here insert accurate description). (2) That said land at the last assessment for taxation was assessed at dollars; and the buildings (if any) at dollars. (3) That I (or we) do not know of any mortgage or encumbrance affecting said land, or that any other person has any estate or interest therein, legal or equitable, in possession, remainder, reversion or expectancy. (If any, add "other than as follows," and set forth each clearly.) (4) That I (or we) obtained title (if by deed, state name of grantor, date and place of record, and file the deed or state reason for not filing. If in any other way, state it). (5) That said land is occupied. (If occupied state name in full, residence and post office address of occupant and the nature of his occupancy. If unoccupied, insert "not".) (6) That the names in full and addresses as far as known to me (or us) of the occupants of all lands adjoining said land are as follows: (Give street and number if possible. If names not known, state whether inquiry has been made, and what inquiry.) (7) That the names and addresses so far as known to me (or us) of the owners of all lands adjoining the above land are as follows: (Same directions as above.) (8) That I am (or we are) married. (Follow literally the directions given in section twenty of chapter one hundred and twenty-eight of the Revised Laws.) (9) That my (or our) full name (or names), residence and post office address is (or are) as follows:

Dated this day of in the year nineteen hundred and
 (Schedule of documents.) (Signature.)

COMMONWEALTH OF MASSACHUSETTS.

ss. 19 .

Then personally appeared the above named , known to me to be the signer (or signers) of the foregoing application, and made oath that the statements made therein, so far as made of his (or their) own knowledge are true, and so far as made upon information and belief, that he (or they) believe them to be true, before me,

Justice of the Peace.

1 SECTION 21. If the applicant is not a resident of the common-
 2 wealth, he shall file with his application a paper appointing an agent
 3 residing in the commonwealth, giving his name in full and post
 4 office address, and shall therein agree that the service of any legal
 5 process in proceedings under or growing out of the application shall
 6 be of the same legal effect if made on said agent as if made on the
 7 applicant within the commonwealth. If the agent dies, or removes
 8 from the commonwealth, the applicant shall forthwith make another

Agent for non-
 resident.
 1898, 562, § 22.

appointment; and if he fails so to do, the court may dismiss the application. 9 10

Amendments
to application.
1898, 562, § 23.

SECTION 22. Amendments to the application, including joinder, substitution, or discontinuance as to parties, shall be allowed by the court at any time upon terms that are just and reasonable; but all amendments shall be in writing, signed and sworn to, like the original. 1 2 3 4 5

Application
may include
several par-
cels.
1898, 562, § 24.
1899, 131, § 5.

SECTION 23. An application may include two or more contiguous parcels of land, or two or more parcels which constitute one holding under one and the same title, within the same registry district. But two or more persons who claim in the same parcels different interests which collectively make up the legal estate in fee simple in each parcel, shall not join in one application for more than one parcel unless their interests are alike in each and every parcel. The court may at any time order an application to be amended by striking out one or more of the parcels, or by a severance of the application. 1 2 3 4 5 6 7 8 9 10

— as to land
bounding on
way.
1898, 562, § 25.

SECTION 24. If the application describes the land as bounded on a public or private way, it shall state whether or not the applicant claims any and what land within the limits of the way, and whether the applicant desires to have the line of the way determined. 1 2 3 4 5

Filing, plans
and muni-
ciments.
1898, 562, § 26.

SECTION 25. The applicant shall file with the application a plan of the land, and all original muniments of title within his control which are mentioned in the schedule of documents. Such original muniments as affect land not included in the application may be withdrawn upon filing certified copies thereof. If an application is dismissed or discontinued, the applicant may, with the consent of the court, withdraw such original muniments of title. 1 2 3 4 5 6 7

Application
subject to
mortgage or
lease.
1898, 562, § 27.
1900, 354, § 4.

SECTION 26. If an application is made subject to an existing recorded mortgage, the holder of which has consented thereto, or subject to a recorded lease for a term exceeding seven years, or if the registration is to be made subject to such a mortgage or lease executed after the time of the application and before the date of the transcription of the decree, the applicant, before a decree of registration is entered, shall, if required by the court, file a certified copy of such mortgage or lease, and shall cause the original, or, in the discretion of the court, a certified copy thereof, to be presented for registration; and no registration fee shall be charged for registering such original mortgage or lease or such certified copy. 1 2 3 4 5 6 7 8 9 10 11 12

Additional
facts.
1898, 562, § 28.

SECTION 27. The court may by general rule require additional facts to be stated in the application and may require the filing of additional papers. 1 2 3

Record of
transfers pend-
ing applica-
tion, etc.
1898, 562, § 29.

SECTION 28. After the filing of an application, and before registration, the land therein described may be dealt with, and instruments relating thereto shall be recorded in the same manner, as if no such 1 2 3

4 application had been filed ; but all instruments left for record which
5 relate to such land shall be indexed in the usual manner in the
6 registry indexes and in the index of applications. As soon as an
7 application is disposed of, the recorder shall make a memorandum
8 stating the disposition of the case, and shall send the same to the
9 register of deeds for the proper district or districts, who shall record
10 and index it with the records of deeds and in the index of appli-
11 cations. If a decree of registration of title is entered the land
12 included in the decree shall, when the decree is transcribed as pro-
13 vided in section forty, become registered land, and thereafter no
14 deeds or other instruments which relate solely to such land shall be
15 recorded with the records of deeds, but shall be registered in the
16 registration book and filed and indexed with the records and docu-
17 ments relating to registered land.

1 SECTION 29. Immediately after the filing of an application, the
2 court shall enter an order referring it to one of the examiners of
3 title, who shall search the records and investigate all facts stated in
4 the application, or otherwise brought to his notice, and shall file in
5 the case a report thereon, concluding with a certificate of his
6 opinion upon the title. The recorder shall give notice to the ap-
7 plicant of the filing of such report. If the opinion of the examiner
8 is adverse to the applicant, he shall be allowed by the court a rea-
9 sonable time in which to elect to proceed further or to withdraw his
10 application. The election shall be made in writing and filed with
11 the recorder.

Reference to
examiner.
1898, 562, § 30.

1 SECTION 30. If, in the opinion of the examiner, the applicant
2 has a good title as alleged, and proper for registration, or, if the
3 applicant after an adverse opinion of the examiner, elects to pro-
4 ceed further, the recorder shall, immediately upon the filing of the
5 examiner's opinion, or upon the filing of the applicant's election, as
6 the case may be, cause notice of the filing of the application to be
7 published in a newspaper published in the district in which any
8 portion of the land lies. The notice shall be issued by the order
9 of the court, attested by the recorder, and shall be in form substan-
10 tially as follows : —

Publication of
notice of appli-
cation.
1898, 562, § 31.
175 Mass. 71.
179 U. S. 405.

REGISTRATION OF TITLE.

SUFFOLK, SS.

COURT OF LAND REGISTRATION.

To (here insert the names of all persons known to have an adverse interest, and the adjoining owners and occupants, so far as known), and to all whom it may concern :

WHEREAS an application has been presented to said court by (name or names and address in full) to register and confirm his (or their) title in the following described land (insert description).

You are hereby cited to appear at the court of land registration to be held at _____, in said county of _____ on the _____ day of _____ A.D., _____, at _____ o'clock in the forenoon, to show cause, if any you have, why the prayer of said application should not be granted. And unless you appear at said court at the time and place aforesaid your default will be recorded, and the said application will be taken as confessed, and you will be forever barred from contesting said application or any decree entered thereon.

WITNESS _____ Esquire, judge of said court, this _____ day of _____ in the year nineteen hundred and _____.

Attest :

Recorder.

Return day of
notice.
1898, 562, § 32.
1900, 354, § 5.

SECTION 31. The return day of said notice shall be not less 1
than twenty nor more than sixty days after the date of issue. The 2
court shall also, within seven days after publication of said notice 3
in a newspaper, cause a copy thereof to be sent by the recorder by 4
mailing a registered letter to every person named therein whose 5
address is known. The court shall also cause a duly attested copy 6
of the notice to be posted in a conspicuous place on each parcel of 7
land included in the application, by a sheriff or deputy sheriff, 8
fourteen days at least before the return day thereof, and his return 9
shall be conclusive proof of such service. If the applicant requests 10
to have the line of a public way determined, the court shall order 11
notice to be given by the recorder, by mailing a registered letter 12
to the mayor of the city or to one of the selectmen of the town or 13
towns in which the land lies, or, if the way is a highway, to one of 14
the county commissioners of the county or counties in which the 15
land lies. If the land borders on a river, navigable stream or 16
shore, or on an arm of the sea where a river or harbor line has 17
been established, or on a great pond, or if it otherwise appears 18
from the application or the proceedings that the commonwealth may 19
have a claim adverse to that of the applicant, notice shall be given 20
in the same manner to the attorney general. The court may also 21
cause other or further notice of the application to be given. The 22
court shall, so far as it considers it possible, require proof of actual 23
notice to all adjoining owners and to all persons who appear to 24
have any interest in or claim to the land included in the applica- 25
tion. Notice to such person by mail shall be by registered letter. 26
The certificate of the recorder that he has served the notice as 27
directed by the court, by publishing or mailing, shall be filed in 28
the case before the return day, and shall be conclusive proof of 29
such service. 30

Guardian ad
litem.
1898, 562, § 33.
1899, 131, § 6.

SECTION 32. Upon the return of the notice, and upon proof of 1
service of all orders of notice issued, the court may appoint a 2
disinterested person to act as guardian ad litem for minors, and for 3
all persons not in being, who are unascertained, unknown or out 4
of the commonwealth, and who may have an interest. The com- 5
pensation of the guardian shall be determined by the court and paid 6
as part of the expenses of the court. 7

Answer to ap-
plication.
1898, 562, § 34.

SECTION 33. Any person who claims an interest, whether named 1
in the notice or not, may appear and file an answer on or before the 2
return day, or within such further time as the court may allow. 3
The answer shall state all objections to the application, shall set 4
forth the interest claimed by the person who files it, and shall be 5
signed and sworn to by him or by a person in his behalf. 6

Order of gen-
eral default;
effect.
1898, 562, § 35.
175 Mass. 71.

SECTION 34. If no person appears and answers within the time 1
allowed, the court may at once upon motion of the applicant, no 2
reason to the contrary appearing, order a general default to be re- 3
corded and the application to be taken for confessed. By the de- 4
scription in the notice, "to all whom it may concern", all the 5
world are made parties defendant and shall be concluded by the 6
default and order. After such default and order, the court may 7
enter a decree confirming the title of the applicant and ordering 8

9 registration thereof. The court shall not be bound by the report
10 of the examiner of title, but may require other or further proof.

1 SECTION 35. If, in any case, an appearance is entered and
2 answer filed, the cause shall be set down for hearing on the motion
3 of either party, but a default and order shall first be entered against
4 all persons who do not appear and answer, in the manner provided
5 in the preceding section. The court may refer the cause or any
6 part thereof to one of the examiners of title, as master, to hear the
7 parties and their evidence, and make report thereof to the court.
8 His report shall have the same effect as that of a master appointed
9 by the superior court in equity, and he shall proceed according to
10 the rules of said court applicable to masters, except as the same
11 may be modified by the rules of the court of land registration.
12 The court may, in any case before decree, require a survey to be
13 made for the purpose of determining boundaries, and may order
14 durable bounds to be set, and referred to in the application, by
15 amendment. The expense of survey and bounds shall be taxed in
16 the costs of the case and may be apportioned among the parties as
17 justice may require. If no persons appear to oppose the applica-
18 tion, such expense shall be borne by the applicant.

Hearing; ref-
erence to
master.
1898, 562, § 36.

1 SECTION 36. If the court finds that the applicant has not title
2 proper for registration, a decree shall be entered dismissing the
3 application, and such decree may be ordered to be without preju-
4 dice. The applicant may withdraw his application at any time
5 before final decree, upon terms to be determined by the court.

Dismissal, etc.,
of application
1898, 562, § 37.

1 SECTION 37. If the court after a hearing finds that the applicant
2 has title as stated in his application, and proper for registration, a
3 decree of confirmation and registration shall be entered, which shall
4 bind the land and quiet the title thereto, subject only to the excep-
5 tions stated in the following section. It shall be conclusive upon
6 and against all persons, including the commonwealth, whether
7 mentioned by name in the application, notice or citation, or in-
8 cluded in the general description "to all whom it may concern".
9 Such decree shall not be opened by reason of the absence, infancy
10 or other disability of any person affected thereby, nor by any pro-
11 ceeding at law or in equity for reversing judgments or decrees;
12 subject however to the right of any person deprived of land or of
13 any estate or interest therein by a decree of registration obtained by
14 fraud to file a petition for review within one year after the entry of
15 the decree, provided no innocent purchaser for value has acquired an
16 interest. If there is any such purchaser, the decree of registration
17 shall not be opened but shall remain in full force and effect forever,
18 subject only to the right of appeal hereinbefore provided. But
19 any person who is aggrieved by such decree in any case may pursue
20 his remedy by action of tort against the applicant or against any
21 other person for fraud in procuring the decree.

Decree of con-
firmation and
registration.
1898, 562, § 38.
175 Mass. 71.
179 U. S. 405.

1 SECTION 38. Every applicant who receives a certificate of title
2 in pursuance of a decree of registration, and every subsequent pur-
3 chaser of registered land who takes a certificate of title for value
4 and in good faith, shall hold the same free from all encumbrances

Tenure of
holder of cer-
tificate of title.
1898, 562, § 39.
1899, 131, § 7.

except those noted on the certificate, and any of the following encumbrances which may be existing: 5 6

First, Liens, claims or rights arising or existing under the laws or constitution of the United States which the statutes of this commonwealth cannot require to appear of record in the registry. 7 8 9

Second, Taxes, within two years after they have been committed to the collector. 10 11

Third, Any highway, town way, or any private way laid out under the provisions of section sixty-five of chapter forty-eight if the certificate of title does not state that the boundary of such way has been determined. 12 13 14 15

Fourth, Any lease for a term not exceeding seven years. 16

Fifth, Any liability to assessment for betterments, or other statutory liability which may attach to land in this commonwealth as a lien prior to, or independent of, the recording or registering of any paper; but if there are easements or other rights appurtenant to a parcel of registered land which for any reason have failed to be registered, such easements or rights shall remain so appurtenant notwithstanding such failure, and shall be held to pass with the land until cut off or extinguished by the registration of the servient estate, or in any other manner. 17 18 19 20 21 22 23 24 25

Contents of
decree.
1898, 562, § 40.

SECTION 39. Every decree of registration shall bear date of the year, month, day, hour and minute of its entry and shall be signed by the recorder. It shall state whether the owner of the land registered is married or unmarried, and if married, the name of the husband or wife. If such owner is under disability it shall state the nature of the disability, and if a minor, shall state his age. It shall contain a description of the land as finally determined by the court, shall set forth the estate of the owner and also, in such manner as to show their relative priority, all particular estates, mortgages, easements, liens, attachments and other encumbrances, including rights of husband or wife, if any, to which the land or the owner's estate is subject, and may contain any other matter properly to be determined in pursuance of this chapter. The decree shall be stated in a form convenient for transcription upon the certificates of title hereinafter mentioned. 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15

Transcription
of decree in
registry.
1898, 562, § 41.

SECTION 40. Immediately upon the entry of the decree of registration, the recorder shall send a certified copy thereof, under the seal of the court, to the register of deeds for the district or districts in which the land lies, and the register, as assistant recorder, shall transcribe the decree in a book to be called the registration book, in which a leaf or leaves in consecutive order shall be devoted exclusively to each title, and note therein the day, hour and minute when said decree is transcribed. The entry made by the assistant recorder in this book in each case shall be the original certificate of title, and shall be signed by him and sealed with the seal of the court. All certificates of title shall be numbered consecutively, beginning with number one. The assistant recorder shall in each case make an exact duplicate of the original certificate, including the seal, but putting on it the words "Owner's duplicate certificate", and deliver it to the owner or to his duly authorized attorney. In case of a variance between the owner's duplicate certificate and the 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16

17 original certificate, the original shall prevail. The certified copy of
 18 the decree of registration shall be filed and numbered by the assist-
 19 ant recorder, with a reference noted on it to the place of record of
 20 the original certificate of title. If an application includes land
 21 lying in more than one district the court shall cause the part lying
 22 in each district to be described separately by metes and bounds in
 23 the decree of registration, the recorder shall send to the assistant
 24 recorder for each registry district a copy of the decree containing a
 25 description of the land within that district, the assistant recorder
 26 shall register the same and issue an owner's duplicate therefor and
 27 thereafter, for all matters pertaining to registration, the portion in
 28 each district shall be treated as a separate parcel of land.

1 SECTION 41. The certificate first registered in pursuance of a
 2 decree of registration in regard to any parcel of land shall, in the
 3 registration book, be entitled "Original certificate of title, entered
 4 pursuant to decree of the court of land registration, dated at" (stat-
 5 ing time and place of entry of decree and the number of the case).
 6 The certificate shall take effect from the date of the transcription of
 7 the decree. Subsequent certificates relating to the same land shall
 8 be in like form, but shall be entitled "Transfer from No. " (the
 9 number of the last previous certificate relating to the same land),
 10 and also the words "Originally registered" (date, volume and page
 11 of registration).

Transcription,
 certificate
 effective from
 date of.
 1898, 562, § 42.

1 SECTION 42. If two or more persons are registered owners as
 2 tenants in common, or otherwise, one owner's duplicate certificate
 3 may be issued for the whole land or a separate duplicate may be
 4 issued to each for his undivided share.

Duplicate cer-
 tificate of
 estates in com-
 mon.
 1898, 562, § 43.

1 SECTION 43. A registered owner who holds one duplicate cer-
 2 tificate for several distinct parcels of land may surrender it, with the
 3 approval of the court, and take out several certificates for portions
 4 thereof, or if he holds separate duplicate certificates for several dis-
 5 tinct parcels, he may surrender them and, with like approval, take
 6 out a single duplicate certificate for the whole land, or several cer-
 7 tificates for different portions thereof. An owner who subdivides a
 8 tract of registered land into lots shall file with the recorder a plan
 9 thereof, when applying for a new certificate or certificates, and the
 10 court, before issuing the same, shall cause the plan to be verified,
 11 and require that all boundaries, streets and passageways shall be
 12 distinctly and accurately delineated thereon.

Surrender of
 certificate,
 issue of sub-
 stitute.
 1898, 562, § 44.

1 SECTION 44. The obtaining of a decree of registration and the
 2 entry of a certificate of title shall be regarded as an agreement run-
 3 ning with the land and binding upon the applicant and all his suc-
 4 cessors in title that the land shall be and forever remain registered
 5 land and subject to the provisions of this chapter and of all acts in
 6 amendment hereof.

Certificate an
 agreement run-
 ning with land.
 1898, 562, § 45.

1 SECTION 45. No title to registered land in derogation of that of
 2 the registered owner shall be acquired by prescription or adverse
 3 possession.

Prescription,
 etc., effect of.
 1898, 562, § 46.

Evidence,
what to be.
1898, 562, § 47.

SECTION 46. The original certificate in the registration book, any copy thereof duly certified under the signature of the recorder or an assistant recorder and the seal of the court, and also the owner's duplicate certificate, shall be received as evidence in all the courts of the commonwealth, and shall be conclusive as to all matters contained therein, except so far as otherwise provided in this chapter.

Contents of
certificate.
1898, 562, § 48.

SECTION 47. Every certificate of title shall set forth the names of all the persons whose estates make up the estate in fee simple in the whole land, and duplicate certificates may be issued to each person, but the recorder or assistant recorder shall note in the registration book and on each duplicate, to whom such duplicate was issued.

Indexes,
record books,
etc.
1898, 562, § 49.

SECTION 48. The recorder, under the direction of the court, shall make and keep indexes of all applications and of all decrees of registration, and shall also index and classify all papers and instruments filed in his office which relate to applications and to registered titles. The recorder shall also, under the direction of the court, cause forms of indexes and registration and entry books to be prepared for the use of the assistant recorders. The court shall prepare and adopt convenient forms of certificates of title and shall also adopt general forms of memoranda to be used by the assistant recorders in registering the common forms of conveyance and other instruments to express briefly their effect.

VOLUNTARY DEALING WITH LAND AFTER ORIGINAL REGISTRATION.

Owner of registered land
may convey,
etc.
1898, 562, § 50.

SECTION 49. An owner of registered land may convey, mortgage, lease, charge or otherwise deal with it as fully as if it had not been registered. He may use forms of deeds, mortgages, leases or other voluntary instruments like those now in use and which are sufficient in law for the purpose intended. But no deed, mortgage or other voluntary instrument, except a will and a lease for a term not exceeding seven years, which purports to convey or affect registered land, shall take effect as a conveyance or bind the land, but shall operate only as a contract between the parties, and as evidence of authority to the recorder or assistant recorder to make registration. The act of registration only shall be the operative act to convey or affect the land and in all cases the registration shall be made in the office of the assistant recorder for the district or districts in which the land lies.

Notice of encumbrances.
1898, 562, § 51.

SECTION 50. Every conveyance, lien, attachment, order, decree, instrument or entry affecting registered land, which would under other provisions of law, if recorded, filed or entered in the registry of deeds, affect the land to which it relates, shall, if registered, filed or entered in the office of the assistant recorder of the district in which the land to which such instrument relates lies, be notice to all persons from the time of such registering, filing or entering.

Estate less
than fee
simple, how
registered.
1898, 562, § 52.

SECTION 51. No new certificate shall be entered or issued upon any transfer of registered land which does not divest the title in fee simple from the owner or some one of the registered owners. All

4 interests in registered land less than an estate in fee simple shall be
5 registered by filing with an assistant recorder the instrument which
6 creates or transfers or claims such interest and by a brief memo-
7 randum thereof made by an assistant recorder upon the certificate
8 of title, and signed by him. A similar memorandum shall also be
9 made on the owner's duplicate. The cancellation or extinguishment
10 of such interests shall be registered in the same manner.

1 SECTION 52. If the assistant recorder is in doubt upon any
2 question, or if any party in interest does not agree as to the proper
3 memorandum to be made in pursuance of any deed, mortgage or
4 other voluntary instrument presented for registration, the question
5 shall be referred to the court for decision, either on the certificate
6 of the assistant recorder stating the question upon which he is in
7 doubt, or upon the suggestion in writing of any party in interest;
8 and the court, after notice to all parties and a hearing, shall enter
9 an order prescribing the form of memorandum to the assistant
10 recorder, who shall make registration in accordance therewith.

Reference of
doubtful ques-
tions.
1898, 562, § 53.

1 SECTION 53. Every deed or other voluntary instrument which
2 is presented for registration shall contain or have indorsed upon it
3 the full name, residence and post office address of the grantee or
4 other person who acquires or claims an interest under such instru-
5 ment, and every deed shall also state whether the grantee is married
6 or unmarried, and if married, the name in full of the husband or wife.
7 Any change in the residence or post office address of such person
8 shall be indorsed by an assistant recorder on the original instru-
9 ment, upon receiving a sworn statement of such change. All
10 names and addresses shall also be entered on all certificates. No-
11 tices and processes issued in relation to registered land may be
12 served upon any person in interest by mailing them to the address
13 so given, and shall be binding, whether he resides within or without
14 the commonwealth.

Grantee's resi-
dence, etc., to
be stated.
1898, 562, § 54.

1 SECTION 54. No new certificate of title shall be entered, and no
2 memorandum shall be made upon any certificate of title by the
3 recorder or any assistant recorder, in pursuance of any deed or
4 other voluntary instrument, unless the owner's duplicate certificate
5 is presented with such instrument, except in cases expressly pro-
6 vided for in this chapter or upon the order of the court, for cause
7 shown, and whenever such order is made, a memorandum thereof
8 shall be entered on the new certificate of title and on the owner's
9 duplicate. The production of the owner's duplicate certificate,
10 whenever a voluntary instrument is presented for registration, shall
11 be conclusive authority from the registered owner to the recorder
12 or an assistant recorder to enter a new certificate or to make a
13 memorandum of registration in accordance with such instrument,
14 and the new certificate or memorandum shall be binding upon the
15 registered owner and upon all persons claiming under him, in favor
16 of every purchaser for value and in good faith. In all cases of
17 registration which are procured by fraud, the owner may pursue all
18 his legal and equitable remedies against the parties to such fraud,
19 without prejudice however to the rights of any innocent holder for

Presentation of
owner's dupli-
cate on entry
of new certifi-
cate, etc.
1898, 562, § 55.

value of a certificate of title. After the transcription of the decree of registration on the original application, any subsequent registration which is procured by the presentation of a forged duplicate certificate, or of a forged deed or other instrument, shall be null and void. In case of the loss or theft of an owner's duplicate certificate, notice shall be sent by the owner or by a person in his behalf to the assistant recorder for the district in which the land lies, as soon as the loss or theft is discovered.

Entry book.
Duplicates and
certified
copies.
1898, 562, § 56.

SECTION 55. Each assistant recorder shall keep an entry book in which he shall enter, in the order of their reception, all deeds and other voluntary instruments, and all copies of writs or other processes filed with him which relate to registered land. He shall note in such book the year, month, day, hour and minute of reception of all instruments, in the order in which they are received. They shall be regarded as registered from the time they are so noted, and the memorandum of each instrument, when made on the certificate of title to which it refers, shall bear the same date.

Every deed or other instrument, voluntary or involuntary, which is so filed with the recorder or assistant recorder, shall be numbered and indexed, and indorsed with a reference to the proper certificate of title. All records and papers relative to registered land in the office of the recorder or of an assistant recorder shall be open to the public in the same manner as probate records, subject to such reasonable regulations as the recorder, under the direction of the court, may make.

Duplicates of all deeds and voluntary instruments which are filed and registered may be presented with the originals, shall be attested and sealed by the recorder or an assistant recorder, indorsed with the file number and other memoranda on the originals and may be taken away by the person who presents them.

Certified copies of all instruments which are filed and registered may also be obtained at any time, upon payment of the assistant recorder's fees.

CONVEYANCE IN FEE.

Conveyance in
fee of regis-
tered lands.
1898, 562, § 57.
1899, 131, § 8.

SECTION 56. An owner who desires to convey his registered land or any portion thereof in fee shall execute a deed of conveyance, which the grantor or the grantee may present to the assistant recorder in the district in which the land lies. The grantor's duplicate certificate shall be produced and presented at the same time. The assistant recorder shall thereupon, in accordance with the rules and instructions of the court, make out in the registration book a new certificate of title to the grantee, and shall prepare and deliver to him an owner's duplicate certificate. The assistant recorder shall note upon the original and duplicate certificates the date of transfer, the volume and page of the registration book in which the new certificate is registered and a reference by number to the last preceding certificate. The grantor's duplicate certificate shall be surrendered and the word "cancelled" shall be stamped upon it. The original certificate shall also be stamped "cancelled". The deed of conveyance shall be filed and indorsed with the number and place of registration of the certificate of title of the land conveyed.

1 SECTION 57. If a deed in fee is for a part only of the land
2 described in a certificate of title, the assistant recorder shall also,
3 in accordance with the rules and instructions of the court, enter a
4 new certificate and issue an owner's duplicate to the grantor for the
5 part of the land which is not included in the deed. In every case
6 of transfer, the new certificate or certificates shall include all the
7 land described in the original and surrendered certificates; but no
8 new certificate to a grantee of a part only of the land shall be
9 invalid by reason of the failure of the assistant recorder to enter a
10 new certificate to the grantor for the remaining unconveyed por-
11 tion. If the land which is described in a certificate of title is
12 divided into lots, designated by numbers or letters, with measure-
13 ments of all the bounds, and a plan of said land has been filed with
14 the recorder and verified pursuant to the provisions of section
15 forty-three, and a certified copy thereof is recorded in the registra-
16 tion book with the original certificate when the registered owner
17 makes a deed of transfer in fee of one or more of such lots, the
18 assistant recorder may, instead of cancelling such certificate and
19 entering a new certificate to the grantor for the part of the land
20 not included in the deed of transfer, enter on the original certificate
21 and on the owner's duplicate certificate a memorandum of such
22 deed of transfer, with a reference to the lot or lots thereby con-
23 veyed, as designated on said plan, and that the certificate is
24 cancelled as to such lot or lots. Every certificate with such memo-
25 randum shall be as effectual for the purpose of showing the grantor's
26 title to the remainder of the land not conveyed as if the old cer-
27 tificate had been cancelled and a new certificate of such land had
28 been entered; and such process may be repeated so long as there
29 is convenient space upon the original certificate and the owner's
30 duplicate certificate for making such memorandum of sale of lots.

Deed of por-
tion of regis-
tered fee.
1898, 562, § 58.
1900, 354, § 6.

1 SECTION 58. If, at the time of any transfer, encumbrances or
2 claims adverse to the title of the registered owner appear upon the
3 registration book, they shall be stated in the new certificate or cer-
4 tificates, except so far as they may be simultaneously released or
5 discharged.

Statement of
encumbrances.
1898, 562, § 59.

MORTGAGES.

1 SECTION 59. The owner of registered land may mortgage it by
2 executing a mortgage deed. Such deed may be assigned, extended,
3 discharged, released in whole or in part, or otherwise dealt with by
4 the mortgagee by any form of deed or instrument which is sufficient
5 in law for the purpose. But such mortgage deed, and all instru-
6 ments which assign, extend, discharge and otherwise deal with the
7 mortgage, shall be registered, and shall take effect upon the title
8 only from the time of registration.

Mortgage of
registered
land.
1898, 562, § 60.

1 SECTION 60. Registration of a mortgage shall be made in the
2 following manner:—The owner's duplicate certificate shall be pre-
3 sented to the assistant recorder with the mortgage deed, and he
4 shall enter upon the original certificate of title and also upon the
5 owner's duplicate certificate a memorandum of the purport of the
6 mortgage deed, the time of filing and the file number of the deed,
7 and shall sign the memorandum. He shall also note upon the

Registration of
a mortgage.
1898, 562, § 61.

mortgage deed the time of filing and a reference to the volume and page of the registration book in which it is registered. The assistant recorder shall also, at the request of the mortgagee, make out and deliver to him a duplicate of the certificate of title like the owner's duplicate, except that the words "Mortgagee's duplicate" shall be stamped upon it in large letters diagonally across its face. A memorandum of the issue of the mortgagee's duplicate shall be made upon the original certificate of title.

Assignment,
etc., of mort-
gage.
1898, 562, § 62.

SECTION 61. If a mortgage upon which a mortgagee's duplicate has been issued is assigned, extended or otherwise dealt with, the mortgagee's duplicate shall be presented with the instrument which assigns, extends or otherwise deals with the mortgage, and a memorandum of the instrument shall be made upon the mortgagee's duplicate certificate. When the mortgage is discharged or otherwise extinguished the mortgagee's duplicate certificate shall be surrendered and stamped "cancelled". The production of the mortgagee's duplicate certificate shall be conclusive authority to register the instrument therewith presented, subject however to all the provisions and exceptions contained in section fifty-five so far as they are applicable.

A mortgage on registered land may be discharged by the mortgagee in person on the registration book in the same manner as a mortgage on unregistered land may be discharged by an entry on the record book in the registry of deeds, and such discharge shall be attested by an assistant recorder.

Foreclosure of
mortgages.
1898, 562, § 63.

SECTION 62. Mortgages of registered land may be foreclosed like mortgages of unregistered land: but in case of foreclosure by entry and possession, the certificate of entry required by section two of chapter one hundred and eighty-seven shall be filed and registered by an assistant recorder within thirty days after the entry, in lieu of recording. After possession has been obtained by the mortgagee or his assigns, by entry or by action, and has continued for the time required by law to complete the foreclosure, he or his assigns may petition the court of land registration for the entry of a new certificate, and the court, after notice to all parties in interest, shall have jurisdiction to hear the cause, and may order the entry of a new certificate on such terms as equity and justice may require.

In case of foreclosure by action as provided in chapter one hundred and eighty-seven, and by exercising the power of sale in the mortgage under the direction of the court as provided therein, a certified copy of the final decree of the court confirming the sale may, after the time for appealing therefrom has expired, be filed with the assistant recorder, and the purchaser shall thereupon be entitled to the entry of a new certificate.

In case of foreclosure by exercising the power of sale without a previous decree of court, the affidavit required by section fifteen of chapter one hundred and eighty-seven shall be filed and registered with the assistant recorder, in lieu of recording. The purchaser at the foreclosure sale or his assigns may thereupon at any time present the deed under the power of sale to the assistant recorder for filing and registration, and obtain a new certificate, after the owner's duplicate certificate and the mortgagee's duplicate,

28 if any, has been delivered up and cancelled: but the provisions of
 29 this chapter shall not prevent the mortgagor or other person in
 30 interest, prior to the entry of a new certificate of title, from
 31 directly impeaching, by bill in equity or otherwise, any foreclosure
 32 proceedings which affect registered land.

33 After a new certificate of title has been entered, no judgment
 34 which may be recovered on the mortgage note for any balance due
 35 thereon shall operate to open the foreclosure or affect the title to
 36 registered land.

LEASES.

1 SECTION 63. Leases of registered land for a term of seven years
 2 or more shall be registered, in lieu of recording. A lessee's dupli-
 3 cate certificate may be issued to the lessee upon his request, subject
 4 to the provisions hereinbefore made relative to a mortgagee's dupli-
 5 cate certificate, so far as they are applicable.

Leases of reg-
 istered land.
 1898, 562, § 64.

TRUSTS.

1 SECTION 64. If a deed or other instrument is filed for the pur-
 2 pose of transferring registered land in trust, or upon any equitable
 3 condition or limitation expressed therein, or for the purpose of
 4 creating or declaring a trust or other equitable interest in such land
 5 without transfer, the particulars of the trust, condition, limitation
 6 or other equitable interest shall not be entered on the certificate;
 7 but a memorandum thereof shall be entered by the words "in trust",
 8 or "upon condition", or other apt words, and by a reference by
 9 number to the instrument which authorizes or creates the same. A
 10 similar memorandum shall be made upon the duplicate certificate.
 11 The assistant recorder shall note upon the original instrument which
 12 creates or declares the trust or other equitable interest a reference
 13 by number to the certificate of title to which it relates, and to the
 14 volume and page in the registration book in which it is registered.
 15 If the instrument which creates or declares a trust or other equitable
 16 interest is already recorded in the registry of deeds or of probate,
 17 a certified copy may be filed by the assistant recorder and registered.

Trusts in reg-
 istered land.
 1898, 562, § 65.

1 SECTION 65. If the instrument which creates or declares a trust
 2 or other equitable interest contains an express power to sell, mort-
 3 gage or deal with the land in any manner, such power shall be stated
 4 in the certificate of title by the words "with power to sell", or
 5 "power to mortgage", and by apt words of description in case of
 6 other powers. No instrument which transfers, mortgages or in any
 7 way deals with registered land held in trust shall be registered,
 8 unless the power thereto enabling is expressly conferred in the in-
 9 strument of trust, or unless the decree of a court of competent juris-
 10 diction on a bill for instructions or other proceeding has construed
 11 the instrument in favor of the power. In such case a certified copy
 12 of such decree may be filed with the assistant recorder, and he shall
 13 make registration in accordance therewith.

— with power
 of sale, etc.,
 how expressed.
 1898, 562, § 66.

1 SECTION 66. When a new trustee of registered land is appointed
 2 by the supreme judicial court, the superior court or the probate
 3 court, a new certificate shall be entered to him upon presentation to

Proceedings
 on appoint-
 ment of new
 trustee.
 1898, 562, § 67.

the assistant recorder of a certified copy of the decree and the sur- 4
render of the duplicate certificate. 5

Implied, etc.,
trusts, how
established.
1898, 562, § 68.

SECTION 67. Whoever claims an interest in registered land by 1
reason of any implied or constructive trust shall file for registration 2
with the assistant recorder a statement thereof which shall contain 3
a description of the land, and a reference to the number of the cer- 4
tificate of title and the volume and page of the registration book in 5
which it is entered. Such claim shall not affect the title of a pur- 6
chaser for value and in good faith before its registration. 7

Application by
trustee for
registration of
land.
1898, 562, § 69.

SECTION 68. A trustee may file an application for registration 1
of any land held in trust by him, unless expressly prohibited by the 2
instrument which creates the trust. 3

LEGAL INCIDENTS OF REGISTERED LAND.

Incidents of
registered
land.
1898, 562, § 70.

SECTION 69. Registered land, and ownership therein, shall in 1
all respects be subject to the same burdens and incidents which 2
attach by law to unregistered land. The provisions of this chapter 3
shall not relieve registered land or the owners thereof from any 4
rights incident to the relation of husband and wife, or from liability 5
to attachment on mesne process or levy on execution, or from lia- 6
bility to any lien of any description established by law on land and 7
the buildings thereon, or the interest of the owner in such land or 8
buildings, or to change the laws of descent, or the rights of parti- 9
tion between co-tenants, or the right to take the same by eminent 10
domain, or to relieve such land from liability to be recovered by an 11
assignee in insolvency under the provisions of law relative to prefer- 12
ences, or to change or affect in any way any other rights or liabilities 13
created by law and applicable to unregistered land, except as other- 14
wise expressly provided in this chapter or any amendment hereof. 15

ATTACHMENTS AND OTHER LIENS.

Attachment of
registered
land.
1898, 562, § 71.

SECTION 70. If a writing of any description or a copy of any 1
writ is required by law to be filed or recorded in the registry of 2
deeds in order to create or preserve any lien, right or attachment 3
upon unregistered land, such writing or copy, if intended to affect 4
registered land shall, in lieu of recording, be filed and registered in 5
the office of the assistant recorder for the registry district in which 6
the land lies, and, in addition to any particulars required in such 7
papers for recording with records of deeds, shall also, except in 8
the case of attachment on mesne process, contain a reference to the 9
number of the certificate of title of the land to be affected, and the 10
volume and page of the registration book in which the certificate is 11
registered, and also, if the attachment, right or lien is not claimed 12
on all the land in any certificate of title, a description sufficiently 13
accurate for identification, of the land intended to be affected. 14

Memorandum
on owner's
duplicate.
1898, 562, § 72.

SECTION 71. If an attachment or other lien or adverse claim of 1
any description is registered, and the duplicate certificate is not 2
presented at the time of registration to the assistant recorder, he 3
shall, within twenty-four hours thereafter, send notice by mail to 4

5 the registered owner, stating that such paper has been registered,
6 and requesting him to send or produce his duplicate certificate in
7 order that a memorandum of the attachment or other lien or ad-
8 verse claim may be made thereon. If the owner neglects or refuses
9 to comply within a reasonable time, the assistant recorder shall
10 suggest the fact to the court, and the court, after notice, shall enter
11 an order to the owner to produce his certificate at a time and place
12 to be named therein, and may enforce the order by suitable process.

1 SECTION 72. Attachments on mesne process and liens of every
2 description upon registered land shall be continued, reduced, dis-
3 charged and dissolved by any method which is sufficient in law to
4 continue, reduce, discharge or dissolve like liens on unregistered
5 land. All certificates or other instruments which are permitted or
6 required by law to be recorded in the registry of deeds to give
7 effect to the continuance, reduction, discharge or dissolution of at-
8 tachments or other liens upon unregistered lands, or to give notice
9 of such continuance, reduction, discharge or dissolution, shall, in
10 the case of like liens upon registered land, be filed with the as-
11 sistant recorder and registered in the registration book, in lieu of
12 recording.

Dissolution,
etc., of attach-
ments, etc.
1898, 562, § 73.

1 SECTION 73. All provisions of law relative to attachments of
2 real estate and leasehold estates on mesne process shall apply to
3 registered land, except that the duties required to be performed by
4 the register of deeds shall be performed by the assistant recorder
5 for the registry district in which the land lies, who, in lieu of
6 recording, shall register the facts required to be recorded, and for
7 that purpose shall keep books similar to those required to be kept
8 for attachments by registers of deeds, and the fees for registering
9 attachments shall be the same as are provided for recording.

Provisions ap-
plicable to
attachments to
apply.
1898, 562, § 74.

1 SECTION 74. The name and address of the plaintiff's attorney
2 shall, in all cases in which an attachment is made, be indorsed upon
3 the writ, and he shall be deemed to be the attorney of the plaintiff
4 until written notice that he has ceased to be such shall have been
5 filed for registration by the plaintiff.

Indorsement
of plaintiff's
attorney upon
writ.
1898, 562, § 75.

1 SECTION 75. If an attachment on mesne process is continued,
2 reduced, dissolved or otherwise affected by an order, decision or
3 judgment of the court in which the action or proceeding in which
4 said attachment was made is pending, or by an order of a court
5 having jurisdiction in insolvency or bankruptcy, a certificate of the
6 entry of such order, decision or judgment from the clerk or register
7 and under the seal of the court, shall be entitled to be registered
8 on presentation to the assistant recorder. A like certificate of the
9 allowance by the court of an amendment which a subsequent at-
10 taching creditor or purchaser contends had the effect of dissolving
11 an attachment may be registered as an amendment allowed, but
12 shall not be conclusive of dissolution, unless the court in which the
13 action or suit is pending adjudicates that the amendment dissolved
14 the attachment, in which case a certificate of the order, as soon as
15 it becomes absolute, shall be registered as a dissolution of the at-
16 tachment.

Registration of
orders of court,
etc.
1898, 562, § 76.

Registration of
claim.
1898, 562, § 77.

SECTION 76. If registered land is included with unregistered land in the statement required by section six of chapter one hundred and ninety-seven to be filed in the registry of deeds, an attested copy of such statement shall be filed with the assistant recorder and registered.

Lien on registered land, how enforced.
1898, 562, § 78.

SECTION 77. A lien of any description upon registered land shall be enforced in the same manner as like liens upon unregistered land. If registered land is set off or sold on execution, or taken or sold for taxes or for any assessment, or sold to enforce a lien for labor or materials, or the lien of a mortgagee or co-tenant arising from a payment of taxes, or for an assessment under the provisions of sections twenty-three to twenty-five of chapter fifty, or for costs and charges for taking down dangerous structures under the provisions of section seven of chapter one hundred and four, or for erecting fences along the line of a railroad corporation under the provisions of section one hundred and twenty-one of chapter one hundred and eleven or for improving meadows and swamps under the provisions of sections four to seven, inclusive, of chapter one hundred and ninety-five, or for flowing land under the provisions of section fourteen of chapter one hundred and ninety-six, or for any costs and charges incident to such liens, any execution, or copy of the execution, any officer's return, or any deed, demand, certificate or affidavit or other instrument made in the course of proceedings to enforce such liens and required by law to be recorded in the registry of deeds in the case of unregistered land, shall be filed with the assistant recorder for the district in which the land lies and registered in the registration book, and a memorandum made upon the proper certificate of title in each case as an adverse claim or encumbrance.

Application for certificate by execution creditors, etc.
1898, 562, § 79.

SECTION 78. Upon the expiration of the time allowed by law for redemption after registered land has been set off or sold on execution, or taken or sold for the enforcement of a lien of any description, the person who claims under an execution, or under a deed or other instrument made in the course of proceedings to levy such execution or enforce any lien, may petition the court for the entry of a new certificate to him, and the application may be granted. Every new certificate entered under the provisions of this section shall contain a memorandum of the nature of the proceeding on which it is based. A new certificate which is entered in pursuance of any tax title shall contain a memorandum that it is subject to the rights of redemption reserved in sections fifty-eight and seventy-five of chapter thirteen. At any time prior to the entry of a new certificate, the registered owner may pursue all legal and equitable remedies to impeach or annul proceedings under executions or to enforce liens of any description.

PENDING SUITS, JUDGMENTS, DECREES AND PARTITIONS.

Effect of actions, etc., how secured.
1898, 562, § 80.

SECTION 79. No writ of entry, petition for partition, or other action at law, or any proceeding in equity which affects the title to land or the use and occupation thereof or the buildings thereon, and no judgment or decree, nor any writ of error, bill of review or

5 other proceeding to vacate or reverse any judgment or decree, shall
6 have any effect upon registered land as against persons other than
7 the parties thereto, unless a memorandum like that described in
8 section twelve of chapter one hundred and thirty-four containing
9 also a reference to the number of the certificate of title of the land
10 affected, and the volume and page of the registration book in
11 which it is entered, shall be filed and registered. The provisions
12 of this section shall not apply to attachments, levies of execution,
13 or to proceedings for the probate of wills, or for administration, in
14 the probate court. If notice of the pendency of the action has been
15 duly registered, it shall be sufficient to register the judgment or
16 decree in such action within sixty days after the rendition thereof.

1 SECTION 80. At any time after final judgment or decree in
2 favor of the defendant, or other disposition in the manner specified
3 in section thirteen of chapter one hundred and thirty-four, of any
4 case in which a memorandum has been registered as provided in the
5 preceding section, a certificate of the clerk, stating the manner of
6 disposal thereof, as provided in said section thirteen, shall be enti-
7 tled to registration.

Registration of
certificate of
judgment, etc.,
1898, 562, § 81.

1 SECTION 81. If judgment is entered for the plaintiff or demand-
2 ant in a real action affecting registered land, except in actions of
3 ejectment and actions under the provisions of chapter one hundred
4 and eighty-one relative to terms of less than seven years, such
5 judgment shall be entitled to registration on presentation of a cer-
6 tificate of the entry thereof from the clerk of the court in which
7 the action is pending to the assistant recorder, who shall enter a
8 memorandum upon the certificate of title of the land to which such
9 judgment relates. If the judgment does not apply to all the land
10 described in the certificate of title, the certificate of the clerk and
11 the memorandum entered by the assistant recorder shall contain a
12 description of the land which is affected by the judgment.

— of judgment
for demand-
ant.
1898, 562, § 82.

1 SECTION 82. If an execution or writ of seisin has been issued
2 upon a writ of entry affecting registered land and served by the
3 officer, he shall cause an attested copy of the execution, with a
4 return of his doings thereon, to be filed and registered within three
5 months after the service and before the return of the execution
6 into the clerk's office, and the demandant, if the judgment was
7 that he was entitled to an estate in fee simple in the demanded
8 premises, or in any part thereof, and for which execution issued,
9 shall thereupon be entitled to the entry of a new certificate of title;
10 but, in informations under the provisions of chapter one hundred
11 and eighty-eight, the commonwealth shall be entitled to have the
12 certificate of the registered owner cancelled by the court of land
13 registration as soon as judgment is rendered in its favor.

— of writ of
seisin, etc.,
and return.
1898, 562, § 83.

1 SECTION 83. If, in a writ of dower, judgment is entered con-
2 firming the report of the commissioners under the provisions of
3 section seven of chapter one hundred and eighty, or if, in a writ
4 of waste, judgment is entered that the plaintiff recover the place
5 wasted, a certificate of the entry of such judgment may be regis-
6 tered as an encumbrance.

— of certificate
of judgment in
writ of dower,
etc.
1898, 562, § 84.

Registration of
decrees in
equity.
1898, 562, § 85.

SECTION 84. A decree of a court of equity which affects title or rights in registered land, whether made in the exercise of general equity jurisdiction, or in the exercise of jurisdiction conferred by statute for the quieting of titles or removing clouds from titles, as provided in chapter one hundred and eighty-two, or for any similar purpose, may be registered in the same manner as a judgment at law. But every court of equity which passes such a decree shall, upon application of the plaintiff or petitioner, order any parties before it to execute for registration any deed or instrument necessary to give effect to its decree, and may require the registered owner to deliver his duplicate certificate to the plaintiff or petitioner to be cancelled or to have a memorandum entered upon it by the assistant recorder. If the person who is required to execute any deed or other instrument which may be necessary to give effect to the decree is absent from the commonwealth, or is a minor, or insane, or for any reason is not amenable to the process of the court, the court may appoint a trustee to execute such instrument, which, when executed, shall be registered and shall have full force and effect to bind the land to be affected thereby.

Proceedings on
judgment for
partition, etc.
1898, 562, § 86.

SECTION 85. In all proceedings for partition of registered land, or for the assignment in fee of registered land claimed by husband or wife by statutory right, after the entry of the final judgment or decree of partition and the acceptance of the report of the commissioners, a copy of the judgment or decree and of the return of the commissioners, certified by the clerk or register, as the case may be, shall be filed and registered; and thereupon, if the land is set off to the owners in severalty, any owner shall be entitled to have a certificate entered of the share set off to him in severalty, and to receive an owner's duplicate therefor. If the land is ordered by the court to be sold, the purchaser or his assigns shall be entitled to have a certificate of title entered to him or them upon presenting the deed of the commissioners for registration; but any new certificate entered in pursuance of partition proceedings, whether by way of set-off or of sale, shall contain a reference to the final judgment or decree of partition, and shall be conclusive as to the title to the same extent and against the same persons as such judgment or decree is made conclusive by the statutes applicable thereto. A person who holds such certificate of title or a transfer thereof shall have the right to petition the court at any time to cancel the memorandum relative to such judgment or decree, and the court, after notice and a hearing, may grant the application. Such certificate shall thereafter be conclusive in the same manner and to the same extent as other certificates of title.

Prior registered mortgage to be again registered on registration of judgment for partition.
1898, 562, § 87.

SECTION 86. If a certified copy of a judgment or decree for partition and of the return of the commissioners is presented for registration, and if a mortgage or lease affecting a specific portion or an undivided share of the premises had previously been registered, the tenant who claims under the mortgagor or lessor shall cause the mortgage or lease and any duplicate certificate of title issued to the mortgagee or lessee to be again presented for registration, and the assistant recorder shall indorse on each a

9 memorandum of such partition and a description of the land set off
 10 in severalty on which such mortgage or lease remains in force.
 11 Such tenant shall not be entitled to receive his own duplicate cer-
 12 tificate of title until such mortgage or lease has been so presented
 13 for registration.

INSOLVENCY.

1 SECTION 87. The messenger shall register notice of the issuing
 2 of a warrant in insolvency or bankruptcy against a debtor who is
 3 an owner of registered land, when the same is committed to him, by
 4 filing a copy thereof with the assistant recorder. Registration of
notice of war-
rant in insol-
vency.
1898, 562, § 88.
 5 An assignee in insolvency or trustee in bankruptcy shall be
 6 entitled to the entry of a new certificate of registered land of the
 7 debtor upon presenting and filing a certified copy of the assign-
 8 ment with the insolvent's duplicate certificate of title; but the new
 9 certificate shall state that it is entered to him as assignee in insol-
 10 vency or trustee in bankruptcy.

1 SECTION 88. If proceedings in insolvency or bankruptcy against
 2 a registered owner, of which notice has been registered, are vacated —of discharge,
etc.
1898, 562, § 89.
 3 by decree, or if the court of insolvency or bankruptcy grants a dis-
 4 charge in composition proceedings and orders a reconveyance of
 5 land to the debtor, a certified copy of the decree, or of such dis-
 6 charge and order, may be filed and registered. If a new certificate
 7 has been entered in the name of the assignee in insolvency or trustee
 8 in bankruptcy as registered owner, the debtor shall be entitled to
 9 the entry of a new certificate in his name, and the certificate of the
 10 assignee or trustee shall be surrendered.

EMINENT DOMAIN.

1 SECTION 89. If land of a registered owner, or any right or
 2 interest therein, is taken by eminent domain, the commonwealth or
 3 body politic or corporate or other authority which exercises such —of land taken
by eminent do-
main.
1898, 562, § 90.
 4 right shall file for registration in the proper registry district a de-
 5 scription of the registered land so taken, giving the name of each
 6 owner thereof, referring by number and place of registration in the
 7 registration book to each certificate of title, and stating what estate
 8 or interest in the land is taken, and for what purpose. A memo-
 9 randum of the right or interest taken shall be made on each certifi-
 10 cate of title by the assistant recorder, and if the fee simple is taken,
 11 a new certificate shall be entered to the owner for the land remain-
 12 ing to him after such taking. If the owner has a lien upon the land
 13 taken for his damages, it shall be so stated in the memorandum of
 14 registration. All fees on account of any memorandum of registra-
 15 tion or entry of new certificates shall be paid by the commonwealth
 16 or body politic or corporate or other authority which takes the
 17 land.

1 SECTION 90. If land which was taken for a public use reverts by
 2 operation of law to the owner from whom it was taken or to his
 3 heirs or assigns, the court, upon the petition of the person entitled New certificate
upon reverter
of land.
1898, 562, § 91.
 4 to the benefit of the reversion, after notice and a hearing, may
 5 order the entry of a new certificate of title to him.

TRANSFER BY DESCENT AND DEVISE.

Transfer by
descent or
devise.
1898, 562, § 92.

SECTION 91. Upon the death of a registered owner his heirs at law or devisees, upon the expiration of thirty days after the entry of a decree of the probate court granting letters testamentary or of administration, or in case of an appeal from such decree, at any time after the entry of a final decree, may file a certified copy of the final decree of the probate court and of the will, if any, with the assistant recorder, and make application for the entry of a new certificate. The court shall issue notice to the executor or administrator and to all other persons in interest, and may also give notice by publication in such newspaper or newspapers as it may consider proper, to all whom it may concern, and, after a hearing, may direct the entry of a new certificate or certificates to the person or persons entitled as heirs or devisees. Any new certificate so entered before the final settlement of the estate of the deceased owner in the probate court shall state expressly that it is entered by transfer from the last certificate by descent or devise, and that the estate is in process of settlement. After the final settlement of the estate in the probate court, or after the expiration of the time allowed by law for bringing an action against an executor or administrator by creditors of the deceased, the heirs at law or devisees may petition the court for an order to cancel the memorandum upon their certificate, stating that the estate is in course of settlement, and the court, after notice and a hearing, may grant the petition; but the liability of heirs or devisees of registered land for claims against the estate of the deceased shall not in any way be diminished or changed.

Executor's
right to sell,
etc., un-
affected.
1898, 562, § 93.

SECTION 92. The provisions of this chapter shall not in any way affect or impair the jurisdiction of the probate court to license an executor or administrator or guardian to sell or mortgage registered land for any purpose for which a license may be granted in the case of unregistered land. The purchaser or mortgagee who takes a deed which is executed in pursuance of such license shall be entitled to a new certificate of title, or memorandum of registration.

ASSURANCE FUND.

Assurance
fund.
1898, 562, § 94.

SECTION 93. Upon the original registration of land, and also upon the entry of a certificate showing title as registered owners in heirs or devisees, there shall be paid to the recorder one-tenth of one per cent of the assessed value of the land, on the basis of the last assessment for municipal taxation, as an assurance fund.

— custody and
investment of.
1898, 562, § 95.

SECTION 94. All money received by the recorder under the provisions of the preceding section shall be paid to the treasurer and receiver general, who shall keep it invested, with the advice and approval of the governor and council, and shall report annually to the general court the condition and income thereof.

— action for
compensation
from.
1898, 562, § 96.

SECTION 95. A person who, without negligence on his part, sustains loss or damage, or is deprived of land or of any estate or interest therein after the original registration of land, by the registration of another person as owner of such land or of any estate or

5 interest therein, through fraud or in consequence of any error, omis-
 6 sion, mistake or misdescription in any certificate of title or in any
 7 entry or memorandum in the registration book, may bring an
 8 action of contract in the superior court for the recovery of com-
 9 pensation for such loss or damage or for such land or estate or
 10 interest therein from the assurance fund; but if the person who is
 11 deprived of land or of any estate or interest therein in the manner
 12 above stated has a right of action or other remedy for the recovery
 13 of the land or of the estate or interest therein, he shall exhaust
 14 such remedy before resorting to the action of contract herein pro-
 15 vided. The provisions of this section shall not deprive the plaintiff
 16 of any action of tort which he may have against any person for
 17 such loss or damage, or deprivation of land or of any estate or
 18 interest therein. But if the plaintiff elects to pursue his remedy in
 19 tort, and also brings an action of contract under the provisions of
 20 this chapter, the action of contract shall be continued to await the
 21 result of the action of tort.

1 SECTION 96. If such action of contract is brought to recover for
 2 loss or damage or for deprivation of land or of any estate or in-
 3 terest therein which arises wholly through any fraud, negligence,
 4 omission, mistake or misfeasance of the recorder, assistant recorder
 5 or of any of the examiners of title, in the performance of executive
 6 or ministerial duties, or of any of the assistants or clerks of the
 7 recorder, in the performance of their respective duties, the action
 8 shall be brought against the treasurer and receiver general as sole
 9 defendant. If such action is brought to recover for loss or damage
 10 or deprivation of land or of any estate or interest therein which
 11 arises wholly through any fraud, negligence, omission, mistake or
 12 misfeasance of some person or persons other than the recorder, assist-
 13 ant recorder or the other officers and assistants above-named, or
 14 which arises jointly through the fraud, negligence, omission, mis-
 15 take or misfeasance of such other person and the recorder, assistant
 16 recorder or other officers and assistants above-named, such action
 17 shall be brought against both the treasurer and receiver general and
 18 such other person or persons, as joint defendants.

Action against
 treasurer and
 receiver gen-
 eral, when.
 1898, 562, § 97.

1 SECTION 97. If there are defendants other than the treasurer
 2 and receiver general and judgment is entered for the plaintiff
 3 against the treasurer and receiver general and against some or all
 4 of the other defendants, execution shall issue against the other
 5 defendants and be levied upon them. If the execution is returned
 6 unsatisfied in whole or in part, and the officer returning the same
 7 certifies that the amount due cannot be collected from the land or
 8 goods of such other defendants, a justice of the superior court shall
 9 direct the clerk to certify the amount due on the execution to the
 10 auditor of the commonwealth, who shall thereupon audit and certify
 11 the amount of the execution in the same manner as claims against
 12 the commonwealth, and the treasurer and receiver general shall
 13 pay the amount out of the assurance fund, without any further act
 14 or resolve making an appropriation therefor.

Judgments,
 how satisfied.
 1898, 562, § 98.

15 If judgment in such action cannot for any reason be entered
 16 against all or any of the other defendants it may be entered against
 17 the treasurer and receiver general alone or against him and such of

the other defendants as are found to be liable, and against whom judgment can lawfully be entered. If judgment is entered against the treasurer and receiver general alone, whether in a case where he is sole defendant or joint defendant with others, the justice of the superior court before whom the action is tried shall direct the clerk to transmit to the auditor a certificate of the entry of judgment and of the amount due, and the treasurer and receiver general shall pay the same upon the certificate of the auditor, as above provided.

Proceedings if
assurance fund
is insufficient.
1898, 562, § 99.

SECTION 98. If the assurance fund at any time is not sufficient to meet the amount called for by such certificate of the auditor the treasurer and receiver general shall make up the deficiency from any funds in the treasury not otherwise appropriated; and in such case, any amounts thereafter received by the treasurer and receiver general on account of the assurance fund shall be transferred to the general funds of the treasury, until the amount paid on account of the deficiency shall have been made up.

Subrogation of
commonwealth
to plaintiff's
rights, when.
1898, 562, § 100.

SECTION 99. In every case in which payment has been made by the treasurer and receiver general under the provisions of section ninety-seven, the commonwealth shall be subrogated to all rights of the plaintiff against any other parties or securities, and the treasurer and receiver general shall enforce the same in behalf of the commonwealth. Amounts so recovered by the treasurer and receiver general shall be paid into the treasury of the commonwealth to the account of the assurance fund.

Assurance
fund, applica-
tion of income.
1898, 562, § 101.

SECTION 100. The income of the assurance fund shall be added to the principal and invested, until said fund amounts to two hundred thousand dollars, and thereafter the income of such fund shall be used to defray, as far as may be, the expenses of the administration of the provisions of this chapter, instead of being added to the fund and accumulated.

—not liable,
when.
1898, 562, § 102.
1899, 125.

SECTION 101. The assurance fund shall not be liable to pay for any loss, damage or deprivation occasioned by a breach of trust, whether express, implied or constructive, by any registered owner who is a trustee, or by the improper exercise of any power of sale in a mortgage. Nor shall any plaintiff recover as compensation in an action of contract under the provisions of this chapter more than the fair market value of the land at the time when he suffered the loss, damage or deprivation thereof.

Limitation,
etc., of actions.
1898, 562, § 103.

SECTION 102. Actions of contract for compensation under the provisions of this chapter by reason of any loss or damage or deprivation of land or any estate or interest therein shall be begun within six years after the time when the cause of action accrued, and not afterward; but the plaintiff in an action for the recovery of the land or estate or interest therein in accordance with the provisions of section ninety-six may bring the action of contract for compensation within one year after the termination of such action. The action of contract herein provided shall survive to the personal representative of the registered owner, unless barred in his lifetime; but the proceeds thereof shall be treated as real estate.

POWERS OF ATTORNEY.

1 SECTION 103. Any person may, by attorney, procure land to
2 be registered and convey or otherwise deal with registered land,
3 but the letters of attorney shall be acknowledged and filed with the
4 recorder or the assistant recorder of the proper registry district,
5 and registered. Any instrument revoking such letters shall be
6 acknowledged and registered in like manner.

Powers of
attorney.
1898, 562, § 104.

LOST DUPLICATE CERTIFICATES.

1 SECTION 104. If a duplicate certificate is lost or destroyed, or
2 cannot be produced by a grantee, heir, devisee, assignee or other
3 person who applies for the entry of a new certificate to him or for
4 the registration of any instrument, a suggestion of the fact of such
5 loss or destruction may be filed by the registered owner or other
6 person in interest and registered. The court may thereupon, upon
7 the petition of the registered owner or other person in interest,
8 after notice and a hearing, direct the issue of a new duplicate cer-
9 tificate, which shall contain a memorandum of the fact that it is
10 issued in place of a lost duplicate certificate, but shall in all re-
11 spects be entitled to like faith and credit as the original duplicate,
12 and shall thereafter be regarded as the original duplicate for all the
13 purposes of this chapter.

Lost duplicate
certificates.
1898, 562, § 105.

ADVERSE CLAIMS.

1 SECTION 105. Whoever claims any right or interest in registered
2 land adverse to the registered owner which arises subsequent to the
3 date of original registration may, if no other provision is made in
4 this chapter for registering the same, make a statement in writing
5 setting forth fully his alleged right or interest, and how or under
6 whom it was acquired, and a reference to the volume and page of
7 the certificate of title of the registered owner, and a description of
8 the land in which the right or interest is claimed. The statement
9 shall be signed and sworn to, and shall state the adverse claimant's
10 residence, and designate a place at which all notices may be served
11 upon him. This statement shall be entitled to registration as an
12 adverse claim, and the court, upon the petition of any party in in-
13 terest, shall grant a speedy hearing upon the question of the validity
14 of such adverse claim, and shall enter such decree thereon as justice
15 and equity may require. If the claim is adjudged to be invalid,
16 the registration shall be cancelled. If the court, after notice and a
17 hearing, finds that a claim thus registered was frivolous or vexatious,
18 it may tax the adverse claimant double costs.

Adverse
claims.
1898, 562, § 106.

SURRENDER OF DUPLICATE CERTIFICATES.

1 SECTION 106. If the recorder or any assistant recorder is re-
2 quested to enter a new certificate in pursuance of an instrument
3 which purports to be executed by the registered owner, or by reason
4 of any instrument or proceedings which divest the title of the regis-
5 tered owner against his consent, and the outstanding owner's dupli-
6 cate certificate is not presented for cancellation when such request
7 is made, the recorder or assistant recorder shall not enter a new

Surrender of
duplicate cer-
tificates.
1898, 562, § 107.

certificate, but the person who claims to be entitled thereto may apply by petition to the court. The court, after a hearing, may order the registered owner or any person withholding the duplicate certificate to surrender it, and direct the entry of a new certificate upon such surrender. If the person withholding the duplicate certificate is not amenable to the process of the court, or if for any reason the outstanding owner's duplicate certificate cannot be delivered up, the court may by decree annul it and order a new certificate of title to be entered. Such new certificate and all duplicates thereof shall contain a memorandum of the annulment of the outstanding duplicate.

If an outstanding mortgagee's or lessee's duplicate certificate is not produced and surrendered when the mortgage is discharged or extinguished or the lease is terminated, like proceedings may be had to obtain registration as in the case of the non-production of an owner's duplicate.

AMENDMENT AND ALTERATION OF CERTIFICATES OF TITLE.

Amendment,
etc., of certi-
ficates.
1898, 562, § 108.

SECTION 107. No erasure, alteration or amendment shall be made upon the registration book after the entry of a certificate of title or of a memorandum thereon and the attestation of the same by the recorder or an assistant recorder, except by order of the court. A registered owner or other person in interest may at any time apply by petition to the court, upon the ground that registered interests of any description, whether vested, contingent, expectant or inchoate, have terminated and ceased; or that new interests have arisen or been created which do not appear upon the certificate; or that any error or omission was made in entering a certificate or any memorandum thereon, or on any duplicate certificate; or that the name of any person on the certificate has been changed; or that the registered owner has married, or if registered as married, that the marriage has been terminated; or that a corporation which owned registered land and has been dissolved has not conveyed the same within three years after its dissolution; or upon any other reasonable ground; and the court shall have jurisdiction to hear and determine the petition after notice to all parties in interest, and may order the entry of a new certificate, the entry or cancellation of a memorandum upon a certificate or grant any other relief upon such terms, requiring security if necessary, as it may consider proper; but the provisions of this section shall not give the court authority to open the original decree of registration, and nothing shall be done or ordered by the court which shall impair the title or other interest of a purchaser who holds a certificate for value and in good faith, or his heirs or assigns, without his or their written consent.

Any petition filed under the provisions of this section and all petitions and motions filed under the provisions of this chapter after original registration shall be filed and entitled in the original case in which the decree of registration was entered.

SERVICE OF NOTICES AFTER REGISTRATION.

Service of
notice after
registration.
1898, 562, § 109.

SECTION 108. All notices which are required by, or are given in pursuance of, the provisions of this chapter by the recorder or any assistant recorder, after original registration, shall be sent by mail

4 to the person to be notified to his residence and post office address
5 as stated in the certificate of title, or in any registered instrument
6 under which he claims an interest, in the office of the recorder or
7 assistant recorder, relating to the parcel of land in question.

8 All notices and citations directed by special order of the court
9 under the provisions of this chapter, after original registration, may
10 be served in the manner above stated, and the certificate of the
11 recorder shall be conclusive proof of such service; but the court
12 may in any case order different or further service, by publication
13 or otherwise.

FEES FOR REGISTRATION.

1 SECTION 109. The fees payable under the provisions of this
2 chapter shall be as follows:—

Fees for registra-
tion.
1898, 562, § 110.

3 For every application to register land under the provisions of
4 this chapter and indexing, recording and transmitting it to the
5 recorder, when filed with assistant recorder, three dollars.

6 For every plan filed, seventy-five cents.

7 For indexing an instrument recorded while application for regis-
8 tration is pending, twenty-five cents.

9 For examining title, five dollars, and one-tenth of one per cent
10 of the value of the land.

11 For each notice by mail, twenty-five cents and the actual cost of
12 printing.

13 For all services by a sheriff under the provisions of this chapter,
14 the same fees as are now provided by law for like services.

15 For each notice by publication, twenty-five cents and the actual
16 cost of publication.

17 For entry of order dismissing application or decree of registra-
18 tion and sending memorandum to assistant recorder, one dollar.

19 For copy of decree of registration, one dollar.

20 For entry of original certificate of title and issuing one duplicate
21 certificate, three dollars.

22 For making and entering a new certificate of title, including issue
23 of one duplicate certificate, one dollar.

24 For each additional duplicate certificate after the first, fifty
25 cents.

26 For the registration of every instrument, whether single or in
27 duplicate or triplicate, including entering, indexing and filing same
28 and attesting registration thereof, and also making and attesting
29 copy of memorandum on one instrument or on a duplicate certifi-
30 cate when required, one dollar and fifty cents.

31 For making and attesting copy of memorandum on each addi-
32 tional instrument or duplicate certificate if required, fifty cents.

33 For filing and registering an adverse claim, three dollars.

34 For entering statement of change of residence or post office
35 address, including indorsing and attesting same on a duplicate cer-
36 tificate, twenty-five cents.

37 For entering any note in the entry book or in the registration
38 book, twenty-five cents.

39 For the registration of a suggestion of death or notice of issue
40 of a warrant in insolvency, twenty-five cents.

41 For the registration of a discharge or release of mortgage or
42 other instrument creating an encumbrance, fifty cents.

For the registration of a memorandum or certificate of entry for possession or deposition in proof thereof, fifty cents.

For the registration of any levy, or of any discharge or dissolution of any attachment or levy, or of any certificate of or receipt for payment of taxes, or of any mechanic's lien or lien for labor or materials, or notice of any pending action or of a judgment or decree, fifty cents.

For indorsing on any mortgage, lease or other instrument a memorandum of partition, one dollar.

For every petition filed under the provisions of this chapter after original registration, one dollar.

For a certified copy of any decree or registered instrument, the same fees as are provided by law for registers of deeds by chapter two hundred and four.

In all cases not expressly provided for by law, the fees of all public officers for any official duty or service under the provisions of this chapter shall be at the same rate as those prescribed herein for like services.

PENALTY.

Penalty for fraudulent conveyance. 1898, 562, § 115.

SECTION 110. Whoever, with intent to defraud, sells and conveys registered land, knowing that an undischarged attachment or any other encumbrance exists thereon which is not noted by memorandum on the duplicate certificate of title, without informing the grantee of such attachment or other encumbrance before the consideration is paid, shall be punished by imprisonment in the state prison for not more than three years or in jail for not more than one year.

CHAPTER 129.

OF ESTATES FOR YEARS AND AT WILL.

Certain estates for years to be regarded as estates in fee simple. 1834, 162, §§ 1, 2. R. S. 60, §§ 18, 19. G. S. 90, §§ 20, 21. P. S. 121, § 1. 112 Mass. 247.

SECTION 1. If land is demised for the term of one hundred years or more, the term shall, so long as fifty years thereof remain unexpired, be regarded as an estate in fee simple as to every thing concerning the descent and devise thereof upon the decease of the owner, the right of dower or of curtesy therein, the sale thereof by executors, administrators, guardians or trustees, the levy of execution thereon, and the redemption thereof if mortgaged or taken on execution: and whoever holds as lessee or assignee under such a lease shall, so long as fifty years of the term remain unexpired, be regarded as a freeholder for all purposes.

Provisions when dower is assigned out of such estate. 1834, 162, § 3. R. S. 60, § 20. G. S. 90, § 22.

SECTION 2. If curtesy or dower is assigned out of such land, the husband or widow and his or her assigns shall pay to the owner of the unexpired residue of the term one-third of the rent reserved in the lease under which the wife or husband held the term.

P. S. 121, § 2.

Tenant at sufferance liable for rent. G. S. 90, § 25. P. S. 121, § 3.

SECTION 3. Tenants at sufferance in possession of land or tenements shall be liable to pay rent therefor for such time as they may occupy or detain the same.

115 Mass. 367.

132 Mass. 346.

10 Allen, 260.
134 Mass. 233.

105 Mass. 486.
156 Mass. 209.

1 SECTION 4. A person who is in possession of land out of which
2 rent is due shall be liable for the amount or proportion of rent due
3 from the land in his possession although it is only a part of what
4 was originally demised.

17 Mass. 440.

22 Pick. 565.

2 Met. 505.

8 Gray, 204.

Tenant of part
of land de-
mised liable
for rent.
R. S. 60, § 22.
G. S. 90, § 24.
P. S. 121, § 4.

1 SECTION 5. Such rent may be recovered in an action of contract,
2 and the deed of demise or other instrument in writing, if any,
3 showing the provisions of the lease, may be used in evidence by
4 either party to prove the amount of rent due from the defendant.

Recovery of
such rent.
1825, 89, § 5.
R. S. 60, § 23.
G. S. 90, § 26.
P. S. 121, § 5.

1 SECTION 6. Such action may be brought by or against executors
2 and administrators for any arrears of rent accrued in the lifetime of
3 the deceased parties, respectively, in the same manner as for debts
4 due from or to the same parties in their lifetime on a personal con-
5 tract.

Action for
such rent by
or against
executors, etc.
1825, 89, § 5.
R. S. 60, § 24.
G. S. 90, § 27.
P. S. 121, § 6.

1 SECTION 7. The provisions of the six preceding sections shall
2 not deprive landlords of any other legal remedy for the recovery of
3 their rents, whether secured to them by lease or by law.

Landlords not
deprived of
other remedies.
R. S. 60, § 25.
G. S. 90, § 28.
P. S. 121, § 7.

1 SECTION 8. If land is held by lease of a person who has an
2 estate therein determinable on a life or on a contingency, and such
3 estate determines before the end of a period for which rent is pay-
4 able, or if an estate which is created by a written lease or an estate
5 at will is determined before the end of such period by surrender,
6 either express or by operation of law, by notice to quit for non-
7 payment of rent, or by the death of any party, the landlord or his
8 executor or administrator may, in an action of contract, recover a
9 proportional part of such rent according to the portion of the last
10 period for which such rent was growing due which had expired at
11 such determination.

Apportion-
ment of rent.
1869, 368, §§ 1-3.
P. S. 121, § 8.
3 Cush. 206.
1 Allen, 489.
6 Allen, 215.
128 Mass. 365.
132 Mass. 346.

1 SECTION 9. If, upon the determination of a tenancy, in any
2 manner mentioned in the preceding section, before the end of a
3 period for which rent is payable, the rent for such period has been
4 paid before such determination, a proportionate part of the rent so
5 paid, according to the portion of such period then unexpired, may
6 be recovered back in an action of contract.

Recovery back
of rent paid in
advance when
tenancy is
terminated.
1869, 368, § 4.
P. S. 121, § 9.

1 SECTION 10. Debts for the rent of a dwelling house which is
2 occupied by the debtor or his family shall be considered as claims
3 for necessities.

G. S. 90, § 29.

P. S. 121, § 10.

8 Gray, 226.

1 Allen, 219.

Claims for rent
to be deemed
necessaries.
1859, 127.

1 SECTION 11. Upon the neglect or refusal to pay the rent due
2 according to the terms of a written lease, fourteen days' notice to
3 quit, given in writing by the landlord to the tenant, shall be suffi-
4 cient to determine the lease, unless the tenant, four days at least
5 before the return day of the writ, in an action brought by the land-
6 lord to recover possession of the premises, pays or tenders to the
7 landlord or to his attorney all rent then due, with interest thereon
8 and with all costs of suit.

Termination of
lease by notice
to quit for non-
payment of
rent.
1847, 267, § 1.
1848, 142, § 2.
1857, 55.
G. S. 90, § 30;
137, § 3.
P. S. 121, § 11.
8 Cush. 282.
137 Mass. 13.

Termination
of tenancy at
will, by notice
to quit.

1825, 89, § 4.
R. S. 60, § 26.
G. S. 90, § 31.
P. S. 121, § 12.
13 Met. 277.
5 Cush. 133.
11 Cush. 93, 191.
11 Gray, 181.
7 Allen, 487.
14 Allen, 43.
103 Mass. 154.

SECTION 12. Estates at will may be determined by either party by three months' notice in writing for that purpose given to the other party; and if the rent reserved is payable at periods of less than three months, the time of such notice shall be sufficient if it is equal to the interval between the days of payment; and in all cases of neglect or refusal to pay the rent due from a tenant at will, fourteen days' notice to quit, given in writing by the landlord to the tenant, shall be sufficient to determine the tenancy.

108 Mass. 150, 553.
113 Mass. 531.

126 Mass. 143.
136 Mass. 532.

137 Mass. 13.
157 Mass. 443.

107 Mass. 406.
165 Mass. 351.
172 Mass. 145.

CHAPTER 130.

OF EASEMENTS.

Easements of
light and air
not to be ac-
quired by use.
1852, 144.
G. S. 90, § 32.
P. S. 122, § 1.

SECTION 1. Whoever erects a house or other building with windows which overlook the land of another person shall not, by the mere continuance of such windows, acquire an easement of light or air so as to prevent the erection of a building on such land.

115 Mass. 204.

— not to be ac-
quired by use
continued for
less than
twenty years.
R. S. 60, § 27.
G. S. 90, § 33.

SECTION 2. No person shall acquire by adverse use or enjoyment a right or privilege of way or other easement from, in, upon or over the land of another, unless such use or enjoyment is continued uninterruptedly for twenty years.

P. S. 122, § 2. 2 Cush. 191. 10 Allen, 557.

Acquirement
of easement by
use may be
prevented by
notice, etc.
1824, 52.
R. S. 60, § 28.
G. S. 90, § 34.
1867, 302.
P. S. 122, § 3.
156 Mass. 453.
157 Mass. 443.

SECTION 3. If a person apprehends that a right of way or other easement in or over his land may be acquired by custom, use or otherwise by any person or class of persons, he may give public notice of his intention to prevent any person from acquiring such easement, by causing a copy of such notice to be posted in a conspicuous place upon the premises for six successive days, and the posting of such copy shall prevent the acquiring of such easement by use for any length of time thereafter; or he may prevent a particular person or persons from acquiring such easement by causing a copy of such notice to be served upon him or them in the manner provided by law for the service of an original summons in a civil action. Such notice from the agent or guardian of the owner of land shall have the same effect as a notice from the owner himself. A certificate, by an officer qualified to serve civil process, of the fact that such copy has been served or posted by him as above provided, if made upon the original notice and recorded with it, within three months after the service or posting, in the registry of deeds in the county or district in which the land lies, shall be conclusive evidence of the service or posting of such copy.

Such notice to
be a disturb-
ance of the
easement.
R. S. 119, § 14.
G. S. 154, § 14.
P. S. 122, § 4.

SECTION 4. A notice given under the provisions of the preceding section shall be a disturbance of the easement to which it relates which shall entitle the person who claims such easement to an action for such disturbance for the purpose of trying the right; and if he prevails in such action, he shall be entitled to full costs although he recovers only nominal damages.

CHAPTER 131.

OF HOMESTEADS.

1 SECTION 1. A householder who has a family shall be entitled
 2 to an estate of homestead, to the extent in value of eight hundred
 3 dollars, in the farm or lot of land and buildings thereon which is
 4 owned or rightly possessed by lease or otherwise and occupied by
 5 him as a residence, and such estate shall be exempt from attachment,
 6 levy on execution and sale for the payment of his debts or legacies
 7 and from the laws of conveyance, descent and devise, except as here-
 8 inafter provided.

100 Mass. 234.

12 Allen, 30.
 101 Mass. 418, 426.

13 Allen, 286.
 138 Mass. 542.

97 Mass. 392.
 161 Mass. 276.

Homestead
 estates.
 1851, 340, § 1.
 1855, 238, § 1.
 1857, 298, § 1.
 G. S. 104, § 1.
 P. S. 123, § 1.
 8 Gray, 432.
 16 Gray, 146.
 6 Allen, 71, 427.
 8 Allen, 575.
 10 Allen, 425.
 11 Allen, 194.

1 SECTION 2. To create such estate of homestead, the fact that it
 2 is designed to be held as a homestead shall be set forth in the deed
 3 of conveyance by which the property is acquired; or, after the title
 4 has been acquired, such design may be declared by a writing duly
 5 signed, sealed and acknowledged and recorded in the registry of deeds
 6 for the county or district in which the property is situated. The
 7 acquisition of a new estate of homestead shall defeat and discharge
 8 any such previous estate.

—acquisition
 of.
 1851, 340, § 3.
 1857, 298, § 3.
 G. S. 104, § 2.
 P. S. 123, § 2.
 6 Allen, 427.
 11 Allen, 37.

1 SECTION 3. All existing estates of homestead, which have been
 2 acquired under any law heretofore in force, shall continue to be held
 3 and enjoyed notwithstanding the repeal of such law; and the pro-
 4 visions of the preceding section shall not require the design so to
 5 hold the same to be declared and recorded anew: but no person
 6 shall hold, exempted as a homestead, property to the value of more
 7 than eight hundred dollars.

161 Mass. 276.

Former rights
 of homestead
 saved.
 1855, 238, § 7.
 1857, 298, §§ 1,
 18.
 G. S. 104, § 3.
 P. S. 123, § 3.
 13 Gray, 21.
 6 Allen, 510.
 131 Mass. 186.

1 SECTION 4. No property shall, by virtue of the provisions of this
 2 chapter, be exempt from sale for taxes, or from levy for a debt con-
 3 tracted for the purchase thereof, or for a debt contracted before the
 4 deed or writing required by section two is recorded, or before
 5 the estates of homestead mentioned in the preceding section were
 6 acquired; nor shall buildings on land which is not owned by the
 7 householder be exempt from sale or levy for the ground rent of the
 8 lot of land whereon they stand.

10 Allen, 146.

11 Allen, 145.

Homestead
 estate not
 exempt from
 levy for taxes,
 etc.
 1851, 340, § 4.
 1855, 238, § 3.
 1857, 298, § 4.
 G. S. 104, § 5.
 P. S. 123, § 4.
 13 Gray, 21.
 16 Gray, 142,
 146.
 6 Allen, 427.

1 SECTION 5. No estate of homestead shall affect a mortgage, lien
 2 or other encumbrance previously existing.

1855, 238, § 4.

1857, 298, § 5.

G. S. 104, § 6.

P. S. 123, § 5.

Previous mort-
 gage, etc.,
 unaffected.
 1851, 340, § 5.

1 SECTION 6. Property which is subject to a mortgage executed
 2 before an estate of homestead was acquired therein, or executed
 3 afterward and containing a release thereof, shall be subject to an
 4 estate of homestead, except as against the mortgagee and those
 5 claiming under him, in the same manner as if there were no such
 6 mortgage. If the owner of the equity in such property redeems the
 7 mortgage, he shall not be allowed to claim under it against the
 8 owner of the estate of homestead, his widow, heirs or assigns, but

Provision for
 homestead
 estate subject
 to prior mort-
 gage.
 G. S. 104, § 4.
 P. S. 123, § 6.

if said owner of the estate of homestead, his widow, heirs or assigns offers to redeem the residue above the homestead estate and the mortgage from a sale or set-off on execution and the judgment creditor has redeemed the mortgage, the amount paid for such redemption of the mortgage, with interest and expenses, shall be included in the amount to be paid for the redemption of said residue.

Release of homestead rights.
1851, 340, §§ 1, 6.
1855, 238, §§ 1, 5.
1857, 298, §§ 1, 3, 6-8, 10, 12, 13.
G. S. 104, §§ 7, 8.
P. S. 123, § 7.
11 Gray, 214, 332.
15 Gray, 139.
16 Gray, 146.
2 Allen, 202, 390.
4 Allen, 516.
6 Allen, 401.
14 Allen, 1.
99 Mass. 7.
100 Mass. 234.
101 Mass. 426.

SECTION 7. No conveyance of property in which an estate of homestead exists, and no release or waiver of such estate, shall convey the part so held and exempted, or defeat the right of the owner or of his wife and children to a homestead therein, unless such conveyance is by a deed in which the wife of the owner joins for the purpose of releasing such right in the manner in which she may release her dower, or unless such right is released as provided in chapter one hundred and fifty-three; but a deed duly executed without such release shall be valid to pass, according to its terms, any title or interest in the property beyond the estate of homestead.

137 Mass. 30.

140 Mass. 64.

121 Mass. 19.
156 Mass. 114.

161 Mass. 276.

Homestead estate, continuance of, after death of householder.
1851, 340, § 2.
1855, 238, § 2.
1857, 298, § 2.
G. S. 104, § 12.
P. S. 123, § 8.
5 Allen, 146.
11 Allen, 194.
97 Mass. 136, 332.
100 Mass. 234.
131 Mass. 186, 446.
136 Mass. 286.

SECTION 8. The estate of homestead existing at the death of a householder shall continue for the benefit of his widow and minor children, and shall be held and enjoyed by them, if one of them or a purchaser under the provisions of section ten occupies the premises, until the youngest child is twenty-one years of age and until the marriage or death of the widow. But all the right, title and interest of the deceased in the premises in which such estate exists, except the estate of homestead thus continued, shall be subject to the laws relating to devise, descent, dower and sale for the payment of debts and legacies.

141 Mass. 187.

161 Mass. 276.

—set-off of, to widow or children.
1857, 298, § 14.
G. S. 104, § 13.
P. S. 123, § 9.

SECTION 9. If a widow or minor children are entitled to an estate of homestead as provided in the preceding section, it may be set off to them in the same manner as dower.

8 Allen, 575.

9 Allen, 239, 242.

97 Mass. 392.

101 Mass. 418.

5 Allen, 77.
131 Mass. 186.

—sale of rights of widow, etc., in.
G. S. 104, § 14.
P. S. 123, § 10.
11 Allen, 194.

SECTION 10. The widow and the guardian of the minor children, if he has obtained a license therefor from the probate court as in the case of sales of land of minors, may join in a sale of an estate of homestead; or, if there is no widow entitled to rights therein, the guardian may, upon obtaining such license, make sale of such estate; and the widow may make such sale if there are no minor children. The purchaser shall enjoy and possess the premises for the full time that the widow and children or either of them might have continued to hold and enjoy them if no sale had been made. The probate court may apportion the proceeds of the sale among the parties entitled thereto.

Partition of property in which estate of homestead exists.
1857, 298, § 14.
G. S. 104, § 9.

SECTION 11. If an estate of homestead exists in property in which other parties have an interest, the party entitled to the homestead, or any other party interested in such property, may have partition thereof like tenants in common.

P. S. 123, § 11.

Set-off of homestead estate of insolvent.

SECTION 12. If the property of a debtor is assigned under the laws relative to insolvent debtors, and such debtor claims, and

3 it appears to the court wherein the proceedings in insolvency are
4 pending, that he is entitled to hold a part thereof as a homestead and
5 that the property in which such estate of homestead exists is of greater
6 value than eight hundred dollars, the court shall cause the property to
7 be appraised by three disinterested appraisers, one of whom shall be
8 appointed by the insolvent, one by the assignee and the third by the
9 court; or if either the assignee or insolvent neglects to appoint, the
10 court shall appoint for him. The appraisers shall be sworn faithfully
11 and impartially to appraise the property, and shall appraise and set
12 off an estate of homestead therein to the insolvent debtor in the
13 manner prescribed in the following section in case of a judgment
14 debtor; and the residue shall vest in and be disposed of by the
15 assignee in the same manner as property which is not exempt by
16 law from levy on execution. The appraisers shall be entitled to the
17 same fees, to be paid out of the estate in insolvency, as are allowed
18 to an appraiser of land seized upon execution.

1857, 298, § 16.
G. S. 104, § 10.
P. S. 123, § 12.
12 Allen, 30.

1 SECTION 13. If a judgment creditor requires an execution to be
2 levied on property which is claimed by the debtor to be as a home-
3 stead exempt from such levy, and if the officer who holds such
4 execution is of opinion that the premises are of greater value than
5 eight hundred dollars, appraisers shall be appointed to appraise the
6 property in the manner provided by law for an appraisal in the case
7 of the levy of an execution on land. If, in the judgment of the ap-
8 praisers, the premises are of greater value than eight hundred
9 dollars, they shall set off to the judgment debtor so much of the
10 premises, including the dwelling house, in whole or in part, as shall
11 appear to them to be of the value of eight hundred dollars; and
12 the residue of the property shall be levied upon and disposed of in
13 like manner as land which is not exempt from levy on execution;
14 and if the property levied on is subject to a mortgage, it may be set
15 off or sold subject to the mortgage and to the estate of homestead,
16 in like manner as land which is subject to a mortgage only.

Levy of execu-
tion upon
property in
which home-
stead exists.
1851, 340, § 7.
1855, 238, § 6.
1857, 298, § 15.
1858, 62.
G. S. 104, § 11.
P. S. 123, § 13.
11 Gray, 217.
6 Allen, 401.
99 Mass. 7.

CHAPTER 132.

OF THE RIGHTS OF A HUSBAND IN THE REAL PROPERTY OF HIS DECEASED WIFE, AND THE RIGHTS OF A WIFE IN THAT OF HER DECEASED HUSBAND.

1 SECTION 1. A husband shall, upon the death of the wife, hold
2 one-third of her land for his life. Such estate shall be known as
3 his tenancy by curtesy, and the provisions of law applicable to
4 dower shall be applicable to curtesy. A wife shall, upon the death
5 of her husband, hold her dower at common law in her deceased
6 husband's land. Such estate shall be known as her tenancy by
7 dower. But in order to be entitled to such curtesy or dower the
8 surviving husband or wife shall file his or her election and claim
9 therefor in the registry of probate within one year after the date
10 of the approval of the bond of the executor or administrator of the
11 deceased, and shall thereupon hold instead of the interest in real prop-
12 erty given in section three of chapter one hundred and forty, curtesy

Rights of hus-
band or widow
in real prop-
erty of the
other.
C. L. 42, § 1.
1692-3, 14, § 1.
1783, 36, §§ 4, 5.
1805, 90, § 1.
1812, 93, § 1.
R. S. 60, §§ 1, 17.
1845, 208.
1854, 406, § 4.
G. S. 90, §§ 1,
16, 19.
1877, 83.
1880, 211, § 3.
P. S. 124, §§ 1, 3.
1885, 255, § 2.
1899, 479, §§ 1, 2.
1900, 450, § 5.
7 Gray, 533.

2 Allen, 45.
113 Mass. 248.
150 Mass. 84,
289.
167 Mass. 575.
169 Mass. 213.
171 Mass. 312.
173 Mass. 529.
174 Mass. 582.

or dower, respectively, otherwise such estate shall be held to be 13
waived. Such curtesy and dower may be assigned by the probate 14
court in the same manner as dower is now assigned, and the ten- 15
ant by curtesy or dower shall be entitled to the possession and 16
profits of one undivided third of the real estate of the deceased from 17
her or his death until the assignment of curtesy or dower, and to all 18
remedies therefor which the heirs of the deceased have in the resi- 19
due of the estate. Rights of curtesy which exist when this chapter 20
takes effect may be claimed and held in the manner above provided, 21
but in such case the husband shall take no other interest in the real 22
or personal property of his wife, and, except as preserved herein, 23
curtesy at common law is abolished. 24

Rights of
husband or
widow in
real property
of the other.
1874, 184, § 2.
P. S. 124, § 2.

SECTION 2. If a deed of land is made to a married woman, who, 1
at the time of its execution, mortgages such land to the grantor 2
to secure the payment of the whole or a part of the purchase money, 3
or to a third person to obtain the whole or a part of such purchase 4
money, her seisin shall not give her husband an estate by the curtesy 5
as against such mortgagee. 6

Wife not dow-
able in wild
land.
R. S. 60, § 12.
1854, 406, § 2.
G. S. 90, §§ 12,
15.
P. S. 124, § 4.

SECTION 3. A widow shall not be entitled to dower in wild land 1
of which her husband dies seised, except wood lots or other land 2
used with his farm or dwelling house, nor in such land which is 3
conveyed by him although it is afterward cleared. 4

15 Mass. 164.

1 Pick. 21.

7 Pick. 143.

17 Pick. 248.

Dower in hus-
band's right of
redemption.
R. S. 60, § 2.
G. S. 90, § 2.
P. S. 124, § 5.
15 Mass. 278.
12 Cush. 288.
6 Gray, 314.
7 Gray, 148.
100 Mass. 224.
101 Mass. 428.
105 Mass. 119.

SECTION 4. If, upon a mortgage made by a husband, his wife has 1
released her right of dower, or if a husband is seised of land subject 2
to a mortgage which is valid and effectual as against his wife, she 3
shall nevertheless be entitled to dower in the land mortgaged as 4
against every person except the mortgagee and those claiming under 5
him. If the heir or other person who claims under the husband re- 6
deems the mortgage, the widow shall either repay such part of the 7
money which was paid by the person so redeeming as shall be equal 8
to the proportion which her interest in the land mortgaged bears to 9
the whole value thereof or, at her election, she shall be entitled to 10
dower according to the value of the estate after deducting the money 11
paid for redemption. 12

—how re-
leased.
1697, 21, § 3.
1783, 37, § 5.
1823, 146, § 1.
R. S. 60, § 7.
1856, 169.
G. S. 90, § 8.
P. S. 124, § 6.
7 Mass. 14.
18 Pick. 9.
6 Cush. 196.

SECTION 5. A married woman may bar her right of dower in 1
land which is conveyed by her husband or by operation of law by 2
joining in the deed conveying the land and therein releasing her 3
right to dower, or by releasing the land by a subsequent deed ex- 4
ecuted either separately or jointly with her husband. Her dower 5
may also be released in the manner provided in chapter one hundred 6
and fifty-three. 7

4 Gray, 600.

107 Mass. 328.

137 Mass. 30.

—how barred
by jointure
before mar-
riage.
R. S. 60, § 8.
G. S. 90, § 9.
P. S. 124, § 7.
7 Mass. 153.
2 Cush. 467.
97 Mass. 195.

SECTION 6. A woman may also be barred of her dower in all the 1
land of her husband by a jointure settled on her with her assent 2
before her marriage, if such jointure consists of a freehold estate in 3
land for her life at least and is to take effect in possession or profit 4
immediately upon the death of her husband. Her assent to such 5
jointure shall be expressed, if she is of full age, by her becoming a 6

7 party to the conveyance by which it is settled, and, if she is under
8 age, by her joining with her father or guardian in such conveyance.

1 SECTION 7. A pecuniary provision, made for the benefit of an in-
2 tended wife and in lieu of dower, shall, if assented to as provided
3 in the preceding section, bar her dower in all the land of her hus-
4 band. 15 Mass. 106. 2 Cush. 467. 5 Allen, 187. 9 Allen, 234.

Dower, how
barred by
pecuniary
provision.
R. S. 60, § 9.
G. S. 90, § 10.
P. S. 124, § 8.

1 SECTION 8. Such jointure or pecuniary provision, if made after
2 marriage, or made before marriage and without the assent of the in-
3 tended wife, shall bar her dower, unless within six months after the
4 death of her husband she makes her election to waive such jointure
5 or provision. If the husband dies while absent from his wife, she
6 shall have six months after notice of his death within which to make
7 such election; and she shall in all cases have six months after notice
8 of the existence of such jointure or provision within which to make
9 such election.

Waiver of
jointure made
without wife's
assent or after
marriage.
R. S. 60, § 10.
G. S. 90, § 11.
P. S. 124, § 9.
147 Mass. 181.

1 SECTION 9. If a widow is entitled by the provisions of law,
2 by deed of jointure, or under the will of her husband, to an undi-
3 vided interest in his land either for life or during widowhood and
4 her right is not disputed by his heirs or devisees, such interest
5 may be assigned to her, in whatever counties the land lies, by the
6 probate court for the county in which the estate of her husband is
7 settled. Such assignment may be made upon her petition or, if she
8 does not petition therefor within one year after the decease of her
9 husband, upon petition by an heir or devisee of her husband, by
10 any person having an estate in the land subject to such interest or
11 by the guardian of any such heir, devisee or person.

Assignment of
widow's in-
terest in hus-
band's realty,
if not disputed.
R. S. 60, § 3.
1850, 111.
1858, 33.
G. S. 90, §§ 3, 17.
1876, 89.
P. S. 124, § 10.
9 Mass. 9.
13 Met. 414.
4 Cush. 257.
112 Mass. 42.
121 Mass. 267.
153 Mass. 46.

1 SECTION 10. Upon such petition, the court shall issue a warrant
2 to three discreet and disinterested persons, who shall be sworn to
3 perform their duty faithfully and impartially and who shall set off
4 the widow's interest by metes and bounds if it can be so done with-
5 out damage to the whole estate. But if the estate out of which a
6 widow's interest is to be assigned consists of a mill or other tene-
7 ment which cannot be divided without damage to the whole, such
8 interest may be assigned out of the rents or profits thereof, to be
9 had and received by the widow as a tenant in common with the
10 other owners of the estate.

Such interest
to be set off by
metes and
bounds, or out
of rents.
1700-1, 22, § 4.
1783, 40, § 3.
R. S. 60, §§ 3, 4.
G. S. 90, §§ 3, 5.
P. S. 124, § 11.
4 Mass. 533.
15 Mass. 164.

1 SECTION 11. If a woman is entitled to an undivided interest in
2 land which is owned by her husband as tenant in common, the pro-
3 bate court, upon petition by her or by any person entitled to petition
4 for assignment of her interest in her husband's land, after notice as
5 in case of other partitions, may empower the commissioners to make
6 partition of the land so owned in common, and then to assign to the
7 widow her interest in the portion set off to the estate of her hus-
8 band.

Provision if
husband is
tenant in
common.
1842, 73.
G. S. 90, § 4.
1876, 89.
P. S. 124, § 12.

1 SECTION 12. If a widow is entitled to an interest in land of
2 which her husband died seised, she may, without having her interest
3 assigned, continue to occupy such land with the heirs or devisees

Widow may
claim her
interest after
occupying in
common with
heirs.

1816, § 4.

R. S. 60, § 6.

G. S. 90, § 7.

P. S. 124, § 13.

161 Mass. 140.

170 Mass. 643.

of the deceased, or to receive her share of the rents or profits thereof, so long as such heirs or devisees do not object thereto; and when the heirs or devisees or any of them desire to hold or occupy their share in severalty, the widow may claim her interest and shall have it assigned to her according to law.

Limitation for claim of interest in realty.

1858, § 6.

G. S. 90, § 6.

P. S. 124, § 14.

1899, 479, § 4.

1900, 450, § 6.

7 Met. 24.

161 Mass. 140.

SECTION 13. No surviving husband or widow of a deceased person shall make claim for an interest in the real estate of such deceased or begin an action or other proceeding for the recovery thereof unless such claim or action is made or begun within twenty years after the decease of the wife or husband or after he or she has ceased to occupy, or receive the profits of, his or her share of such real estate, except that if at the time of such decease the surviving husband or widow is absent from the commonwealth, under twenty-one years of age, insane or imprisoned, he or she may make such claim or begin such action or proceeding at any time within twenty years after such disability ceases.

Re-endowment of woman if evicted.

R. S. 60, § 13.

G. S. 90, § 13.

P. S. 124, § 15.

13 Mass. 162.

1 Met. 66.

SECTION 14. If a woman is lawfully evicted of land which has been assigned to her as dower or settled upon her as jointure, or is deprived of the provision made for her by will or otherwise in lieu of dower, she may be endowed anew in like manner as if such assignment, jointure or other provision had not been made.

CHAPTER 133.

OF THE DESCENT OF REAL PROPERTY.

Descent of real property of intestates regulated.

C. L. 158, § 3.

1692-3, 14, § 1.

1710-11, 2, § 1.

1719-20, 10, § 4.

1734-5, 16.

1783, 36, § 1.

1789, 2.

1805, 90, § 1.

R. S. 61, §§ 1, 12.

G. S. 91, §§ 1, 11.

1876, 220, §§ 1, 3.

1880, 219.

P. S. 125, § 1.

20 Pick. 514.

3 Met. 187.

9 Met. 28.

6 Cush. 156.

1 Gray, 284.

129 Mass. 266.

149 Mass. 39.

167 Mass. 499.

SECTION 1. When a person dies seised of land, tenements or hereditaments, or of any right thereto, or entitled to any interest therein, in fee simple or for the life of another, not having lawfully devised the same, they shall descend, subject to his debts and to the rights of the husband or wife and minor children of the deceased as provided in the two preceding chapters and in chapter one hundred and forty, in manner following:—

First, In equal shares to his children and to the issue of any deceased child by right of representation; and, if there is no surviving child of the intestate, then to all his other lineal descendants. If all such descendants are in the same degree of kindred to the intestate, they shall share the estate equally; otherwise, they shall take according to the right of representation.

Second, If he leaves no issue, then in equal shares to his father and mother.

Third, If he leaves no issue nor mother, then to his father.

Fourth, If he leaves no issue nor father, then to his mother.

Fifth, If he leaves no issue and no father or mother, then to his brothers and sisters and to the issue of any deceased brother or sister by right of representation; and, if there is no surviving brother or sister of the intestate, then to all the issue of his deceased brothers and sisters. If all such issue are in the same degree of kindred to the intestate, they shall share the estate equally; otherwise, they shall take according to the right of representation.

130 Mass. 178.

132 Mass. 528.

25 Sixth, If he leaves no issue, and no father, mother, brother or 111 Mass. 389.
26 sister, and no issue of any deceased brother or sister, then to his 144 Mass. 138.
27 next of kin in equal degree ; but if there are two or more collateral 149 Mass. 502.
28 kindred in equal degree claiming through different ancestors, those
29 who claim through the nearest ancestor shall be preferred to those
30 claiming through an ancestor who is more remote.
31 Seventh, If an intestate leaves no kindred and no widow or 16 Pick. 177.
32 husband, his or her estate shall escheat to the commonwealth.

1 SECTION 2. The degrees of kindred shall be computed according Degrees of
2 to the rules of the civil law : and the kindred of the half blood shall kindred.
3 inherit equally with those of the whole blood in the same degree. 1783, 36, § 1.
P. S. 125, § 2. 12 Mass. 489. 5 Cush. 232. 116 Mass. 562. 1805, 90, § 1.
R. S. 61, § 5.
G. S. 91, § 5.

1 SECTION 3. An illegitimate child shall be heir of his mother and Illegitimate
2 of any maternal ancestor, and the lawful issue of an illegitimate child to be heir
3 person shall represent such person and take by descent any estate of his mother.
4 which such person would have taken if living. 1828, 139.
R. S. 61, § 2.
1851, 211.
G. S. 91, § 2.
P. S. 125, § 3.
11 Met. 294. 108 Mass. 40. 113 Mass. 430. 172 Mass. 473.

1 SECTION 4. If an illegitimate child dies intestate and without — mother of, to
2 issue who may lawfully inherit his estate, such estate shall descend be heir of.
3 to his mother or, if she is not living, to the persons who would 1828, 139.
4 have been entitled thereto by inheritance through his mother if he R. S. 61, § 3.
5 had been a legitimate child. G. S. 91, § 3.
P. S. 125, § 4.
1882, 132.
4 Pick. 93. 149 Mass. 502.

1 SECTION 5. An illegitimate child whose parents have intermarried, — to be con-
2 and whose father has acknowledged him as his child, shall be consid- sidered legiti-
3 ered legitimate. 1853, 253. G. S. 91, § 4. mate, when.
P. S. 125, § 5. 5 Allen, 257. 8 Allen, 551. 1832, 147.
R. S. 61, § 4.

1 SECTION 6. Inheritance or succession by right of representation Construction
2 is the taking by the descendants of a deceased heir of the same of terms.
3 share or right in the estate of another person as their parent would R. S. 61, § 13.
4 have taken if living. Posthumous children shall be considered as G. S. 91, § 12.
5 living at the death of their parent. P. S. 125, § 6.

CHAPTER 134.

GENERAL PROVISIONS RELATIVE TO REAL PROPERTY.

1 SECTION 1. Aliens may take, hold, transmit and convey real Aliens may
2 property, and no title to real property shall be invalid on account take and con-
3 of the alienage of a former owner ; but the provisions of this section vey real prop-
4 shall not defeat the title to any real property heretofore released or erty.
5 conveyed by the commonwealth or by authority thereof. 1852, 29, 86.
G. S. 90, § 38.
P. S. 125, § 1.
15 Pick. 345.
100 Mass. 527.

1 SECTION 2. If a contingent remainder, executory devise or other Contingent
2 estate in expectancy, is so granted or limited to a person that in estates to be
3 case of his death before the happening of the contingency the alienable.
4 estate would descend to his heirs in fee simple, he may, before the R. S. 60, § 30.
G. S. 90, § 37.
P. S. 125, § 2.
7 Met. 366.

3 Gray, 398.
121 Mass. 198.
125 Mass. 356.

happening of the contingency, sell, assign or devise the land 5
subject to the contingency. 126 Mass. 230. 139 Mass. 262. 6

Estates tail
liable for
debts, etc.
1791, 60, § 2.
R. S. 60, § 29.
G. S. 90, § 36.
P. S. 126, § 3.
4 Mass. 189.
3 Gray, 162.

SECTION 3. Land held in fee tail, except an estate tail in re- 1
mainder, shall be liable for the debts of the tenant in tail, both in 2
his lifetime and after his decease, as if held in fee simple; and if 3
taken on execution or sold by executors, administrators or guar- 4
dians, the creditor or purchaser shall hold such land in fee simple. 5

Conveyances,
etc., for life,
with remainder
to heirs.
1 Co. R. 219.
1791, 60, § 3.
R. S. 59, § 8.

SECTION 4. If land is granted or devised to a person and after 1
his death to his heirs in fee, however the grant or devise is ex- 2
pressed, an estate for life only shall vest in such first taker, and a 3
remainder in fee simple in his heirs. 4

G. S. 89, § 12.	4 Gray, 353.	120 Mass. 106.	157 Mass. 53.
P. S. 126, § 4.	16 Gray, 568.	131 Mass. 323.	163 Mass. 69.
1 Met. 281.	99 Mass. 454.	149 Mass. 200.	

Effect of words
"die without
issue", etc.
1888, 273.
153 Mass. 374.

SECTION 5. In a limitation of real or personal property by deed, 1
will or other instrument in writing executed after the thirtieth day 2
of April in the year eighteen hundred and eighty-eight, the words 3
"die without issue", or "die without leaving issue", or "have no 4
issue", or "die without heirs of the body", or other words im- 5
porting either a want or failure of issue of any person in his life- 6
time or at the time of his death, or an indefinite failure of his issue, 7
shall, unless a contrary intention clearly appears by the instrument 8
creating such limitation, mean a want or failure of issue in the life- 9
time or at the time of the death of such person, and not an indefi- 10
nite failure of his issue. 11

— of con-
veyances and
devises to two
or more per-
sons.
1785, 62, § 4.
R. S. 59, §§ 10,
11.
G. S. 89, §§ 13,
14.
P. S. 126, §§ 5, 6.
1885, 237.
5 Mass. 343.
7 Mass. 131.
11 Mass. 469.

SECTION 6. A conveyance or devise of land to two or more 1
persons or to husband and wife, except a mortgage or a devise or 2
conveyance in trust, shall create an estate in common and not in 3
joint tenancy, unless it is expressed in such conveyance or devise 4
that the grantees or devisees shall take jointly, or as joint tenants, 5
or in joint tenancy, or to them and the survivor of them, or unless 6
it manifestly appears from the tenor of the instrument that it was 7
intended to create an estate in joint tenancy. 8

16 Mass. 59.	5 Cush. 153.	16 Gray, 308.	141 Mass. 219.
16 Pick. 491.	6 Gray, 428.	2 Allen, 115.	154 Mass. 537.
4 Cush. 111.	8 Gray, 154.	110 Mass. 396.	158 Mass. 11.

— of deed of
tenant for life
or years.
R. S. 59, § 6.
G. S. 89, § 9.
P. S. 126, § 7.

SECTION 7. A conveyance by a tenant for life or years which 1
purports to grant a greater estate than he possesses or can lawfully 2
convey shall not work a forfeiture of his estate, but shall pass to the 3
grantee all the estate which such tenant can lawfully convey. 4

Expectant
estate not to be
defeated by act
of owner of
precedent
estate, etc.
R. S. 59, § 7.

SECTION 8. No expectant estate shall be defeated or barred by 1
an alienation or other act of the owner of the precedent estate, nor 2
by the destruction of such precedent estate by disseisin, forfeiture, 3
surrender or merger. 4

G. S. 89, § 10.	P. S. 126, § 8.	1 Allen, 230.	171 Mass. 504.
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Effect of two
preceding sec-
tions.

SECTION 9. The provisions of the two preceding sections shall 1
not prevent the barring of estates tail in the manner provided in 2

3 chapter one hundred and twenty-seven, nor an expectant estate from
 4 being defeated in a manner provided for or authorized by the person
 5 creating such estate.

R. S. 59, § 8.
 G. S. 89, § 11.
 P. S. 126, § 9.

1 SECTION 10. Fixtures annexed to the freehold by a life tenant
 2 or by his assigns may be removed during the continuance of the life
 3 estate or within a reasonable time after its determination; and in
 4 determining what are fixtures, the rules of the common law which
 5 prevail between a landlord and a tenant for years shall govern.
 6 The provisions of this section shall not affect the right of the owner
 7 of land to make a different provision by will or otherwise as to the
 8 removal of fixtures, nor impair or affect the provisions of any will or
 9 other instrument by which an estate for life in land is created or
 10 limited.

Removal of
 fixtures by life
 tenant.
 1870, 170.
 P. S. 126, §§ 10,
 11.

1 SECTION 11. If the supreme judicial court or the probate court
 2 for the county in which the land lies finds that wood or tim-
 3 ber, standing on land the use and improvement of which belongs,
 4 for life or otherwise, to a person other than the owner of the fee
 5 therein, has ceased to improve by growth, or ought for any cause to
 6 be cut, it may appoint a trustee to sell and convey said wood or
 7 timber to be cut and carried away within a time to be limited in the
 8 order of sale, to hold and invest the proceeds thereof after paying
 9 therefrom the expenses of such sale, to pay over the income, above
 10 the taxes and other expenses of the trust, to the person entitled to
 11 such use and improvement while his right thereto continues, and
 12 thereafter to pay the principal of the fund to the owner of such
 13 land. If wood or timber has been cut as aforesaid, no more thereof
 14 shall be cut on such land by the person entitled to such use and im-
 15 provement without permission from said court. Such sale if au-
 16 thorized by a probate court, shall be made in the manner provided
 17 by law for the sale of real property by guardians; and if such sale
 18 is authorized by the supreme judicial court, the trustees shall give
 19 to such person as the court shall designate a bond, for the use and
 20 benefit of the persons interested in the proceeds of the sale, with
 21 condition for the faithful discharge of the trust; and the court may
 22 from time to time remove the trustee, and appoint another in his
 23 stead.

Provision for
 sale of stand-
 ing wood
 during life
 estate, etc.
 1818, 96.
 R. S. 60, §§ 33-
 37.
 G. S. 90, §§ 33-
 43.
 1869, 249.
 P. S. 126, § 12.

1 SECTION 12. A writ of entry, petition for partition or other pro-
 2 ceeding, either at law or in equity, which affects the title to real
 3 property or the use and occupation thereof or the buildings thereon,
 4 shall not have any effect except against the parties thereto, their
 5 heirs and devisees and persons having actual notice thereof, until
 6 a memorandum containing the names of the parties to such pro-
 7 ceeding, the court in which it is pending, the date of the writ or
 8 other commencement thereof, the name of the city or town in which
 9 the real property liable to be affected thereby is situated and a de-
 10 scription of such real property sufficiently accurate for identification
 11 is recorded in the registry of deeds for the county or district in
 12 which such real property is situated; but the provisions of this
 13 section shall not apply to attachments, levies of execution or pro-
 14 ceedings in the probate courts.

Proceedings
 affecting title
 to realty bind-
 ing on third
 parties, when.
 1877, 229, §§ 1, 3.
 P. S. 126, § 13.
 1897, 463.

Record of certificate of final disposition of proceedings.
1877, 229, § 2.
P. S. 126, § 14.

SECTION 13. At any time after final judgment or a decree in favor of the defendant, or after the discontinuance, dismissal or other final disposition, by consent of parties or otherwise, of a proceeding mentioned in the preceding section, or in case of the non-entry of the writ, petition or bill of complaint, the clerk of the court wherein such judgment, decree, discontinuance, dismissal or other final disposition is recorded, or out of which such writ issued or to which such petition or bill of complaint was addressed, shall upon demand give a certificate of the fact of such judgment, decree, discontinuance, dismissal, final disposal or non-entry, and such certificate may be recorded in the registry in which the original record mentioned in said section was made.

— of judgments affecting land.
1892, 289.

SECTION 14. A judgment or decree, at law or in equity, rendered after the eighth day of June in the year eighteen hundred and ninety-two affecting the title to real property, shall not have any effect except against the parties thereto, their heirs and devisees and persons having actual notice thereof, unless a certified copy of the record thereof has been recorded in the registry of deeds for the county or district in which the land lies, with a memorandum of the city or town in which the land lies and a description thereof sufficiently accurate for identification if the record of the judgment or decree does not give those particulars. If a notice of the pendency of the action has been duly recorded in the registry of deeds, the record of the judgment or decree may be made within sixty days after its rendition, and the entry of an ordinary attachment of real property in the registry of deeds shall be considered notice of the pendency of the action.

Forcible entry forbidden.
1700-1, 14, § 1.
1784, 8, § 1.
R. S. 104, § 1.
1851, 233, § 76.

SECTION 15. A person shall not make an entry into land or tenements except in cases where his entry is allowed by law, and in such cases he shall not enter by force, but in a peaceable manner.

G. S. 137, § 1.
P. S. 126, § 15.

5 Met. 343.
4 Cush. 141.

1 Allen, 215.
99 Mass. 385.

121 Mass. 309.
170 Mass. 29.

Entry for breach of condition.
1898, 514.

SECTION 16. If real property has been conveyed by deed on a condition therein expressed, which is not a mortgage, the grantor, his heirs and devisees upon breach of such condition may enter on the granted premises in order to revest the title; and a certificate of such entry, made and sworn to before a justice of the peace by two competent witnesses and recorded within thirty days after such entry in the registry of deeds for the county or district in which the land is situated, or a duly certified copy of the record of such certificate shall, after the expiration of three years from such entry, be prima facie evidence of such breach and entry. If a grantor, his heirs or devisees made such entry and certificate and filed the certificate as herein required prior to the ninth day of June in the year eighteen hundred and ninety-eight, said certificate or a duly certified copy of the record thereof shall have like force and effect.

Effect of descent or discontinuance.
R. S. 101, § 5;
119, § 13.

SECTION 17. No descent or discontinuance shall take away or defeat any right of entry or of action for the recovery of real property.

G. S. 134, § 4; 154, § 13.

P. S. 126, § 16.

1 SECTION 18. If real property, upon which any encumbrance ex- Grantor to
 2 ists, is conveyed by deed or mortgage the grantor, in whatever make encum-
 3 capacity he may act, shall before the consideration is paid, by ex- brances known
 4 ception in the deed or otherwise, make known to the grantee the to grantee.
 5 existence and nature of such prior encumbrance so far as he has 1855, 177, § 1.
 6 knowledge thereof. G. S. 89, § 16.
 P. S. 126, § 17.

1 SECTION 19. Whoever conveys real property by a deed or mort- —liable
 2 gage which contains a covenant that it is free from all encumbrances for damages
 3 shall, if it appears by a public record that an actual or apparent in removing
 4 encumbrance, known or unknown to him, exists thereon, be liable apparent encumbrance.
 5 in an action of contract to the grantee, his heirs, executor, admin- 1855, 177, § 3.
 6 istrator, successors or assigns, for all damages sustained in remov- G. S. 89, § 17.
 7 ing the same. P. S. 126, § 18.
 138 Mass. 439.
 148 Mass. 102.
 151 Mass. 237.

1 SECTION 20. Conditions or restrictions, unlimited as to time, by Restrictions or
 2 which the title or use of real property is affected shall be limited to conditions,
 3 the term of thirty years after the date of the deed or other instrument etc., on real
 4 or the date of the probate of the will creating them, except in cases property.
 5 of gifts or devises for public, charitable or religious purposes. The 1887, 418.
 6 provisions of this section shall not apply to conditions or restrictions
 7 existing on the sixteenth day of July in the year eighteen hundred
 8 and eighty-seven or to those contained in a deed, gift or grant of
 9 the commonwealth.

TITLE II.

OF WILLS, OF THE SETTLEMENT OF THE ESTATES OF DECEASED PERSONS, OF GUARDIANSHIP, AND OF TRUSTS.

CHAPTER 135. — Of Wills.

CHAPTER 136. — Of the Probate of Wills and the Appointment of Executors.

CHAPTER 137. — Of the Appointment of Administrators.

CHAPTER 138. — Of Public Administrators.

CHAPTER 139. — General Provisions relative to Executors and Administrators.

CHAPTER 140. — Of Allowances to Widows and Children, the Distribution of the Estates of Intestates and of Advancements.

CHAPTER 141. — Of the Payment of Debts, Legacies and Distributive Shares.

CHAPTER 142. — Of Insolvent Estates of Deceased Persons.

CHAPTER 143. — Of the Settlement of the Estates of Deceased Non-Residents.

CHAPTER 144. — Of the Settlement of Estates of Absentees.

CHAPTER 145. — Of Guardianship.

CHAPTER 146. — Of Sales, Mortgages and Leases of Real Property by Executors, Administrators and Guardians.

CHAPTER 147. — Of Trusts.

CHAPTER 148. — Provisions relative to Sales, Mortgages, etc., by Executors, etc.

CHAPTER 149. — Of Bonds of Executors, Administrators, Guardians and Trustees.

CHAPTER 150. — Of the Accounts and Settlements of Executors, Administrators, Guardians, Trustees and Receivers.

CHAPTER 135.

OF WILLS.

SECTIONS 1-9. — Making and Revocation.

SECTIONS 10-15. — Custody of Wills, and their Production in Court.

SECTIONS 16-18. — Rights of Husband or Widow.

SECTIONS 19-24. — Provisions for Special Cases.

SECTIONS 25-30. — Contribution among Devisees and Legatees.

MAKING AND REVOCATION.

<p>By whom and how wills may be made. 29 Car. II., c. 3, § 5. B. L. 11. C. L. I., § 2. 1692-3, 14, § 1; 15, § 3. 1783, 24, §§ 1, 2. R. S. 62, §§ 1, 5, 6. 1842, 74.</p>	<p>SECTION 1. Every person of full age and sound mind may by his last will in writing, signed by him or by a person in his presence and by his express direction, and attested and subscribed in his presence by three or more competent witnesses, dispose of his property, real and personal, except an estate tail, and except as is provided herein and in chapters one hundred and thirty-one and one hundred and thirty-two and in section one of chapter one hun-</p>	<p>1 2 3 4 5 6 7</p>
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8 dred and fifty-three. A married woman, in the same manner and
9 with the same effect, may make a will.

1850, 200.
1855, 304, § 5.
1857, 249, § 4.

G. S. 92, §§ 1,
2, 6; 108, §§ 9, 10.
1864, 198, 276.
P. S. 127, § 1;
147, § 6.
1884, 301.

1885, 255.
1887, 290, § 2.
1899, 479, §§ 8, 9.
1900, 450, § 7.
17 Pick, 134, 373.
23 Pick, 10.

9 Met. 28.
2 Cush. 433.
12 Cush. 332.
16 Gray, 91.
10 Allen, 153, 155.
11 Allen, 49.

99 Mass. 79.
110 Mass. 157.
135 Mass. 238.
160 Mass. 140.
169 Mass. 74, 186.
176 Mass. 216.

1 SECTION 2. If a witness to a will is competent at the time of
2 his attestation, his subsequent incompetency shall not prevent the
3 probate and allowance of such will, nor shall a mere charge on the
4 land of the testator for the payment of his debts prevent a creditor
5 from being a competent witness to his will.

Competency of
witnesses.
1783, 24, § 12.
R. S. 62, §§ 6, 8.
G. S. 92, §§ 6,
10.
P. S. 127, § 2.
12 Mass. 358.

9 Pick. 350.

10 Allen, 153.

1 SECTION 3. A beneficial devise or legacy which is made in a will
2 to a subscribing witness thereto, or to the husband or wife of such
3 witness, shall be void unless there are three other competent sub-
4 scribing witnesses to such will.

Devise or
legacy to
witness.
1783, 24, §§ 11,
13.
R. S. 62, § 8.

G. S. 92, § 10.

1878, 122.

P. S. 127, § 3.

106 Mass. 474.

172 Mass. 425.

1 SECTION 4. A will which is made and executed in conformity
2 with the law existing at the time of its execution shall have the
3 same effect as if it were made pursuant to the provisions of this
4 chapter.

Wills made in
accordance
with law at
time of execu-
tion.

1838, 2.

G. S. 92, § 7.

P. S. 127, § 4.

1 SECTION 5. A will which is made out of the commonwealth and
2 is valid according to the laws of the state or country in which it was
3 made may be proved and allowed in this commonwealth, and shall
4 thereupon have the same effect as if it had been executed according
5 to the laws of this commonwealth.

— made out
of the com-
monwealth.
1843, 92.
G. S. 92, § 8.
P. S. 127, § 5.
5 Const. 245.
13 Gray, 330.

13 Allen, 38.

1 SECTION 6. A soldier in actual military service or a mariner at
2 sea may dispose of his personal property by a nuncupative will.

— nuncupa-
tive.
1692-3, 15, § 11.
1783, 24, § 6.

R. S. 62, § 7.

G. S. 92, § 9.

P. S. 127, § 6.

1 SECTION 7. No will, except as provided in this chapter and in
2 chapter one hundred and fifty-three, shall pass any property, real or
3 personal, or charge or in any way affect the same; and no will
4 shall take effect until it has been duly proved and allowed in the
5 probate court. Such probate shall be conclusive as to the due
6 execution of a will.

— probate of,
requisite.
R. S. 62, § 32.
G. S. 92, § 38.
P. S. 127, § 7.
16 Mass. 433.
1 Pick. 114.
6 Met. 360.
11 Cush. 519.
12 Allen, 1.

140 Mass. 411.

1 SECTION 8. No will shall be revoked except by burning, tear-
2 ing, cancelling or obliterating it with the intention of revoking it
3 by the testator himself or by a person in his presence and by his
4 direction; or by some other writing signed, attested and subscribed
5 in the same manner as a will; or by subsequent changes in the
6 condition or circumstances of the testator from which a revocation
7 is implied by law.

— revocation
of.
1692-3, 15, §§ 4,
11.
1783, 24, §§ 2, 6.
R. S. 62, § 9.
G. S. 92, § 11.
P. S. 127, § 8.
1 Pick. 535.
5 Pick. 112.
9 Pick. 350.
4 Gray, 162.
114 Mass. 510.

123 Mass. 102.

138 Mass. 45, 116.

141 Mass. 75.

1 SECTION 9. The marriage of a person shall act as a revocation
2 of a will made by him previous to such marriage, unless it appears
3 from the will that it was made in contemplation of such marriage.
4 If the will is made in the exercise of a power of appointment and

— revocation
of, by mar-
riage.
1892, 118.
141 Mass. 475.
165 Mass. 177.
170 Mass. 401.

the real and personal property subject to the appointment would not, without the appointment, pass to the persons who would have been entitled to it if it had been the estate and property of the testator making the appointment if he had died intestate, so much of the will as makes the appointment shall not be revoked by the marriage.

CUSTODY OF WILLS, AND THEIR PRODUCTION IN COURT.

Deposit of
will in registry
of probate.
R. S. 62, § 10.
G. S. 92, § 12.
P. S. 127, § 9.

SECTION 10. A will may be deposited by the testator, or by any person for him, in the registry of probate in the county in which the testator lives, to be safely kept until delivered or disposed of as hereinafter provided; and the register, upon being paid a fee of one dollar therefor, shall receive and keep such will and give a certificate of the deposit thereof.

Form of
deposit.
R. S. 62, § 11.
G. S. 92, § 13.
P. S. 127, § 10.

SECTION 11. A will intended to be deposited as aforesaid shall be enclosed in a sealed wrapper, with an indorsement thereon of the name and residence of the testator and of the day when and the person by whom it is deposited, and the wrapper may also have indorsed upon it the name of a person to whom the will is to be delivered after the death of the testator. A will, when so deposited, shall not be opened until it is delivered to a person entitled to receive it or is otherwise disposed of as hereinafter provided.

Delivery of
will so de-
posited.
R. S. 62, § 12.
G. S. 92, § 14.
P. S. 127, § 11.

SECTION 12. During the lifetime of the testator such will shall be delivered only to him or in accordance with his order in writing duly proved before the judge of probate by the oath of a subscribing witness; and after his death it shall be delivered to the person named in the indorsement, if such person demands it.

Will not called
for, to be
opened at first
probate court.
R. S. 62, § 13.
G. S. 92, § 15.
P. S. 127, § 12.

SECTION 13. If the will is not called for by the person, if any, named in the indorsement, it shall be publicly opened at the first probate court held after notice of the testator's death, and shall be retained in the registry until it is so opened. If the jurisdiction of the case belongs to another court, it shall be delivered to the executors or other persons entitled to the custody thereof, to be by them presented for probate in such other court.

Possessor of
will to present
it for probate.
1692-3, 14, § 2.
1783, 24, § 16.
1817, 190, § 32.
R. S. 62, § 14.
G. S. 92, § 16.
1875, 210.
P. S. 127, § 13.
4 Mass. 137.
4 Pick. 33.

SECTION 14. A person who has the custody of a will, other than a register of probate, shall, within thirty days after notice of the death of the testator, deliver such will into the probate court which has jurisdiction of the probate thereof, or to the executors named in the will, who shall themselves deliver it into such court within said time; and if a person neglects without reasonable cause so to deliver a will, after being duly cited for that purpose by such court, he may be committed to jail by warrant of the court until he delivers it as above provided; and he shall be further liable to a person who is aggrieved for the damage sustained by him by reason of such neglect.

Proceedings
against per-
sons suspected
of concealing
wills, etc.

SECTION 15. If a person claiming to be interested in the estate of a person deceased makes complaint under oath to a probate court against any one suspected of retaining, concealing, or conspiring

4 with others to retain or conceal, a will or testamentary instrument
 5 of the deceased, the court may cite the suspected person to appear
 6 before it and be examined on oath upon the matter of the complaint.
 7 Upon such examination all interrogatories and answers shall be in
 8 writing signed by the person examined, and shall be filed in the
 9 court. If the person cited refuses to appear and submit to examina-
 10 tion or to answer such interrogatories as are lawfully propounded
 11 to him, or to obey any lawful order of the court, he may be com-
 12 mitted to jail by warrant of the court until he submits to its order.
 13 The court may award costs to be paid by either party, and may
 14 issue execution therefor.

1849, 146.
 G. S. 92, §§ 17,
 18.
 P. S. 127, § 14.

RIGHTS OF HUSBAND OR WIDOW.

1 SECTION 16. The surviving husband, except as provided in
 2 section thirty-six of chapter one hundred and fifty-three, or the
 3 widow of a deceased person, at any time within one year after the
 4 probate of the will of such deceased, may file in the registry of pro-
 5 bate a writing signed by him or by her, waiving any provisions that
 6 may have been made in it for him or for her, or claiming such por-
 7 tion of the estate of the deceased as he or she would have taken if
 8 the deceased had died intestate, and he or she shall thereupon take
 9 the same portion of the property of the deceased, real and personal,
 10 that he or she would have taken if the deceased had died intestate;
 11 except that if he or she would thus take real and personal property
 12 to an amount exceeding ten thousand dollars in value, he or she
 13 shall receive in addition to that amount only the income during his
 14 or her life of the excess of his or her share of such estate above that
 15 amount, the personal property to be held in trust and the real
 16 property vested in him or her for life, from the death of the
 17 deceased; and except that if the deceased leaves no kindred, he or
 18 she upon such waiver shall take the interest he or she would have
 19 taken if the deceased had died leaving kindred but no issue. If
 20 the real and personal property of the deceased which the surviving
 21 husband or widow takes under the foregoing provisions exceeds ten
 22 thousand dollars in value, the ten thousand dollars above given
 23 absolutely shall be paid out of that part of the personal property in
 24 which the husband or widow is interested; and if such part is in-
 25 sufficient the deficiency shall, upon the petition of any person
 26 interested be paid from the sale or mortgage in fee, in the manner
 27 provided for the payment of debts or legacies, of that part of the
 28 real property in which he or she is interested. Such sale or mort-
 29 gage may be made either before or after such part is set off from
 30 the other real property of the deceased for the life of the husband
 31 or widow.

Rights of
 husband or
 widow.
 1783, 24, § 8.
 1833, 40.
 R. S. 60, § 11.
 1854, 428.
 G. S. 92, § 24.
 1861, 164, § 1.
 1871, 200.
 1873, 58.
 P. S. 127, § 18.
 1899, 479, § 10.
 1900, 450, § 7.
 1 Allen, 490.
 2 Allen, 468.
 6 Allen, 178.
 101 Mass. 40.
 102 Mass. 49.
 109 Mass. 146.
 173 Mass. 413.

32 If, after probate of such will, legal proceedings have been in-
 33 stituted wherein its validity or effect is drawn in question, the
 34 probate court may, within said one year, on petition and after such
 35 notice as it may order, extend the time for filing the aforesaid
 36 claim and waiver until the expiration of six months from the ter-
 37 mination of such legal proceedings.

1 SECTION 17. The probate court may upon application of a
 2 person interested appoint one or more trustees, who shall be subject

Appointment
 of trustees to
 hold husband's

or widow's share.
1861, 164, § 2.
1870, 262, § 1.
P. S. 127, § 19.
1899, 470, § 11.
1900, 450, § 8.

to the provisions of chapter one hundred and forty-seven so far as applicable, to hold during the life of a husband or widow any personal property to the income of which he or she may be entitled under the provisions of the preceding section.

Widow not to have dower in addition to provisions of will, unless, etc.
1783, 24, § 8.
R. S. 60, § 11.
G. S. 92, § 24.
1861, 164, § 1.

SECTION 18. A husband shall not be entitled to his tenancy by the curtesy in addition to the provisions of his deceased wife's will, nor a widow to her dower in addition to the provisions of her deceased husband's will, unless such plainly appears by the will to have been the intention of the testator.

P. S. 127, § 20. 5 Met. 277. 113 Mass. 246. 140 Mass. 562.
12 Pick. 146. 4 Cush. 174. 135 Mass. 326. 144 Mass. 564.

PROVISIONS FOR SPECIAL CASES.

Child not provided for in will.
1700-1, 4, § 2.
1783, 24, § 8.
R. S. 62, § 21.
G. S. 92, § 25.
P. S. 127, § 21.
2 Gray, 535.
3 Gray, 367.

SECTION 19. If a testator omits to provide in his will for any of his children or for the issue of a deceased child, they shall take the same share of his estate which they would have taken if he had died intestate, unless they have been provided for by the testator in his lifetime or unless it appears that the omission was intentional and not occasioned by accident or mistake.

11 Allen, 47. 106 Mass. 320. 132 Mass. 131. 170 Mass. 403.
97 Mass. 439. 112 Mass. 184. 137 Mass. 86. 133 U. S. 216.
101 Mass. 125. 126 Mass. 135. 164 Mass. 38.

Posthumous children.

1700-1, 4, § 1.
1783, 24, § 7.
R. S. 62, § 22.
G. S. 92, § 26.
P. S. 127, § 22.

SECTION 20. If a child of a testator, born after his father's death, has no provision made for him by his father in his will or otherwise, he shall take the same share of his father's estate which he would have taken if his father had died intestate. 137 Mass. 527.

Devisee or legatee dying before testator.
1783, 24, § 8.
R. S. 62, § 24.
G. S. 92, § 28.
P. S. 127, § 23.
18 Pick. 41.
5 Met. 396.
7 Met. 141.

SECTION 21. If a devise or legacy is made to a child or other relation of the testator, who dies before the testator, but leaves issue surviving the testator, such issue shall, unless a different disposition is made or required by the will, take the same estate which the person whose issue they are would have taken if he had survived the testator.

9 Cush. 122.
101 Mass. 36. 108 Mass. 382. 155 Mass. 415. 162 Mass. 448.

Devise to give fee.

R. S. 62, § 4.
G. S. 92, § 5.
P. S. 127, § 24.
4 Gray, 348.

SECTION 22. A devise shall convey all the estate which the testator could lawfully devise in the land mentioned, unless it clearly appears by the will that he intended to convey a less estate.

98 Mass. 75. 108 Mass. 529. 147 Mass. 570. 168 Mass. 144. 170 Mass. 403, 540.

Land acquired after making of will to pass by it.
R. S. 62, § 3.
G. S. 92, § 4.
P. S. 127, § 25.

SECTION 23. An estate, right or interest in land acquired by a testator after the making of his will shall pass thereby in like manner as if possessed by him at the time when he made his will, unless a different intention manifestly and clearly appears by the will.

6 Mass. 149. 7 Met. 141. 1 Cush. 107. 106 Mass. 578.
5 Pick. 112. 12 Met. 262. 4 Cush. 369. 170 Mass. 403.

Devise of land to which testator has only right of entry.

R. S. 62, § 2.
G. S. 92, § 3.
P. S. 127, § 26.
10 Mass. 131.
15 Mass. 115.
15 Pick. 185.
12 Met. 501.

SECTION 24. If a testator devises land of which he is not seised, but in which he has a right of entry, or if, after making a will, he is disseised of land devised thereby, such land shall nevertheless pass to the devisee in like manner as it would have descended to the testator's heirs if he had died intestate, and the devisee shall have the same remedy for the recovery of such land as such heirs might have had.

CONTRIBUTION AMONG DEVISEES AND LEGATEES.

1 SECTION 25. If a posthumous child or a child, or the issue of a
 2 child, omitted in the will takes under the provisions of section nine-
 3 teen or twenty a portion of the estate of a testator, such portion
 4 shall be taken from all the devisees and legatees in proportion to
 5 and not exceeding the value of what they respectively receive under
 6 such will, unless in consequence of a specific devise or legacy or
 7 of some other provision of the will a different apportionment is
 8 found necessary to give effect to the testator's intention relative
 9 to that part of his estate which passes by his will.

Contribution
to make up
portion of
posthumous
or omitted
child.
1783, 24, § 7.
R. S. 62, § 23.
G. S. 92, § 27.
P. S. 127, § 27.
137 Mass. 527.

1 SECTION 26. If property which is given by will is taken from
 2 a devisee or legatee for the payment of the debts of the testator,
 3 all the other devisees and legatees shall, subject to the provisions
 4 of the following section, contribute their respective proportions of
 5 the loss to the person from whom such property is taken, so that
 6 the loss may fall on all the devisees and legatees in proportion
 7 to and not exceeding the value of the property received by each.

— of devisee or
legatee when
property is
taken for the
payment of
debts.
1758-9, 37, § 3.
1783, 24, § 18.
R. S. 62, § 25.
G. S. 92, § 29.
P. S. 127, § 28.
6 Mass. 149.
1 Cush. 107.

1 SECTION 27. If the testator, by making a specific devise or
 2 bequest, has virtually exempted a devisee or legatee from liability
 3 to contribute with the others for the payment of the debts, or if by
 4 any other provisions in his will he has prescribed or required an
 5 appropriation of his estate different from that prescribed in the pre-
 6 ceding section, his property shall be appropriated and applied in
 7 conformity with the provisions of the will, so far as such appropria-
 8 tion and application can be made without affecting the liability of
 9 his whole estate for the payment of his debts.

Special appro-
priation of his
estate made by
testator to be
followed.
R. S. 62, §§ 26,
27.
G. S. 92, §§ 30,
31.
P. S. 127, § 29.
1 Cush. 107.
13 Allen, 252.
106 Mass. 100.
122 Mass. 282.
124 Mass. 228.
127 Mass. 64.

1 SECTION 28. If a posthumous child or a child, or the issue of
 2 a child, omitted in the will takes under the provisions of section
 3 nineteen or twenty a portion of the estate of a testator, such portion
 4 of the estate shall, for the purposes of the two preceding sections,
 5 be considered as if it had been devised or bequeathed to such child
 6 or other descendant; and he shall contribute with the devisees and
 7 legatees, and be entitled to claim contribution from them, as before
 8 provided.

Posthumous or
omitted child
liable and
entitled to con-
tribution.
R. S. 62, § 28.
G. S. 92, § 32.
P. S. 127, § 30.

1 SECTION 29. If a person who is liable to contribute according to
 2 the provisions of the three preceding sections is insolvent or unable
 3 to pay his just proportion of the contribution required, the other
 4 persons so liable to contribute shall be severally liable for the loss
 5 occasioned by such insolvency, each one in proportion to and not
 6 exceeding the value of the property received by him from the estate
 7 of the deceased: and if a person who is so liable dies without
 8 having paid his proportion, his executors and administrators shall
 9 be liable therefor in like manner as if it had been his own debt and
 10 to the extent to which he would have been liable if living.

Insolvency of
devisee or
legatee.
R. S. 62, § 29.
G. S. 92, § 33.
P. S. 127, § 31.

1 SECTION 30. If the estate of a devisee under a will is taken for
 2 the tenancy by the curtesy of the husband, or for the dower of the
 3 widow, of the testator, all the other devisees and legatees shall con-
 4 tribute their respective proportions of the loss to the person from

Contribution
if estate is
taken from
devisee for
dower, &c.
1839, 16, § 1.
G. S. 92, § 36.

P. S. 127, § 32.
137 Mass. 527.

whom the estate is so taken, so that the loss may fall upon all the devisees and legatees in proportion to and not exceeding the value of property received by them under the will; but no devisee or legatee shall contribute if exempted therefrom by the provisions of the will.

CHAPTER 136.

OF THE PROBATE OF WILLS AND THE APPOINTMENT OF EXECUTORS.

Petition to be
under oath.
1891, 414.

SECTION 1. A petition for the probate of a will, letters of administration or letters testamentary shall have annexed an affidavit of the petitioner that the statements therein made are true to the best of his knowledge and belief.

Proof of will
on testimony
of one witness,
when.
1817, 190, § 33.
R. S. 62, § 15.
G. S. 92, § 19.
P. S. 129, § 1.
1901, 242.
3 Mass. 236.

SECTION 2. If it appears to the probate court, by the consent in writing of the heirs, or by other satisfactory evidence, that no person interested in the estate of a person deceased intends to object to the probate of an instrument purporting to be the will of such deceased person, the court may grant probate thereof upon the testimony of one only of the subscribing witnesses; and the affidavit of such witness, taken before the register of probate, may be received as evidence.

Probate of will
conclusive,
when.
1889, 435.
3 Allen, 87.
144 Mass. 415.

SECTION 3. A decree allowing a will or adjudicating the intestacy of the estate of a deceased person in any court in this commonwealth having jurisdiction thereof shall, after two years from the rendition of such decree, or, if proceedings for a reversal thereof are had, after two years from the establishment of such decree, be final and conclusive in favor of purchasers for value, in good faith, without notice of any adverse claim, of any property, real or personal, from devisees, legatees, heirs, executors, administrators or guardians; and in favor of executors, administrators, trustees and guardians, who have settled their accounts in due form and have in good faith disposed of the assets of the estate in accordance with law; and also in favor of persons who have in good faith made payments to executors, administrators, trustees or guardians. If a subsequent decree reverses or qualifies the decree so originally rendered, heirs, devisees, legatees and distributees shall be liable to a subsequent executor, administrator or other person found entitled thereto, for any proceeds or assets of the estate received by them under the former decree, and in such case proceeds of real property shall be treated as real property. The provisions of this section shall not make an adjudication of the fact of death conclusive.

Probate court
to issue letters
testamentary
or of adminis-
tration.
R. S. 63, § 1.
G. S. 93, § 1.
P. S. 129, § 2.

SECTION 4. If a will has been duly proved and allowed, the probate court shall issue letters testamentary thereon to the executor named therein, if he is legally competent and accepts the trust and gives bond to discharge the same; otherwise said court shall grant letters of administration on the estate as provided in the following chapter.

1 SECTION 5. If a person named as executor in a will has deceased
 2 or refuses to accept the trust, or, after being duly cited for the
 3 purpose, neglects to accept the same or neglects for twenty days
 4 after the probate of the will to give bond according to law, the
 5 court shall grant letters testamentary to the other executors, if
 6 there are any competent and willing to accept the trust. 172 Mass. 496.

If one executor
 does not ac-
 cept, letters
 may be granted
 to the others.
 1783, 24, § 16.
 R. S. 63, § 5.
 1855, 111.
 G. S. 93, § 6.
 P. S. 129, § 3.
 111 Mass. 331.

1 SECTION 6. If a person named as executor in a will is at the
 2 time of the probate thereof under the age of twenty-one years, the
 3 other executor or executors, if any, shall administer the estate until
 4 the minor arrives at full age, when, upon giving bond according to
 5 law, he may be admitted as a joint executor of such will.

If one executor
 is a minor, the
 others may act
 during nonage.
 1783, 24, § 17.
 R. S. 63, § 6.
 G. S. 93, § 7.
 P. S. 129, § 4.

1 SECTION 7. If a judge or register of probate desires to be
 2 appointed executor of the will of his wife, child, father or mother,
 3 who at the time of their decease were inhabitants of or resident in
 4 his county, or to be appointed administrator, or administrator with
 5 the will annexed, of the estate of such wife, child, father or mother,
 6 such will may be proved and allowed and appointment made and all
 7 subsequent proceedings relative to the estate may be had in the
 8 probate court of any adjoining county.

Appointment
 of judge or
 register of
 probate as
 executor, etc.
 1898, 69, § 1.

1 SECTION 8. The register of probate of the county in which such
 2 will is proved or such appointment is made shall forthwith transmit
 3 to the register of probate of the county in which the deceased
 4 resided, or of which said deceased was an inhabitant, a true and
 5 attested copy of the petition, the decree thereon, the will allowed,
 6 if any, the bond given and the letters of administration or letters
 7 testamentary, and he shall thereafter so transmit an attested copy
 8 of any inventory, account, affidavit or other paper that shall be filed
 9 and entered on the docket, and of any petition on which a decree
 10 shall be made and of the decree thereon, which shall all be recorded
 11 by the register to whom they are transmitted.

Copy of pro-
 ceedings filed,
 where.
 1898, 69, § 2.

1 SECTION 9. The executor of an executor shall not, as such,
 2 administer on the estate of the first testator.

Executor of
 executor.
 1783, 24, § 19.

R. S. 63, § 10.
 G. S. 93, § 9.

P. S. 129, § 10.
 131 Mass. 408.

156 Mass. 313.
 157 Mass. 160.

1 SECTION 10. A person interested in a will which has been proved
 2 and allowed in any other of the United States or in a foreign country
 3 according to the laws of such state or country, or in a will which,
 4 by the laws of the state or country in which it was made, is valid
 5 without probate, may produce to the probate court in any county in
 6 which there is any property, real or personal, on which such will
 7 may operate, a copy of such will and of the probate thereof, duly
 8 authenticated, or, if such will is valid without probate as aforesaid,
 9 a copy of the will or of the official record thereof duly authenticated
 10 by the proper officer having custody of such will or record in such
 11 state or country; and the court shall thereupon assign a time and
 12 place for a hearing and cause notice thereof to be given to all per-
 13 sons interested by publication in a newspaper three weeks succes-
 14 sively, the first publication to be thirty days at least before the time
 15 assigned for the hearing.

Allowance of
 foreign wills.
 1785, 12, §§ 1, 2.
 R. S. 62, §§ 17,
 18.
 G. S. 92, § 21.
 1878, 201.
 1879, 185, § 1.
 P. S. 127, § 15.

Allowance of
foreign wills.
1785, 12, § 2.
R. S. 62, § 19.
G. S. 92, § 22.
1879, 185, § 1.
P. S. 127, § 16.
12 Met. 421.
11 Cush. 519.
10 Gray, 162.
13 Gray, 330.
111 Mass. 331.

SECTION 11. If at such hearing the court finds from the copies before it and any additional proof as to the authenticity and execution of the will that the instrument ought to be allowed in this commonwealth as the last will of the deceased, it shall order the copy to be filed and recorded, and the will shall then have the same effect as if it had been originally proved and allowed in the probate court in the usual manner; but the provisions of this section shall not give effect to a will which is made in this commonwealth by an inhabitant but is not executed according to the law thereof.

Settlement of
estate in such
cases.
1785, 12, § 1.
R. S. 62, § 20.
G. S. 92, § 23.
P. S. 127, § 17.
10 Cush. 17.

SECTION 12. After allowing a will under the provisions of the two preceding sections, the probate court shall grant letters testamentary on such will or letters of administration with the will annexed, and shall proceed in the settlement of the estate which may be found in this commonwealth in the manner provided in chapter one hundred and forty-three relative to such estates.

CHAPTER 137.

OF THE APPOINTMENT OF ADMINISTRATORS.

SECTIONS 1-5. — Ordinary Administration.

SECTIONS 6, 7. — Administration with the Will annexed.

SECTION 8. — Administration de Bonis Non.

SECTIONS 9-15. — Special Administration.

ORDINARY ADMINISTRATION.

Administra-
tion, to whom
granted.
G. L. 158, § 2.
1692-3, 14, § 1.
1783, 36, § 8.
1817, 190, § 14.
1833, 100.
R. S. 64, § 4.
1839, 142, § 1.
1840, 40, § 1.
1853, 419.
G. S. 94, § 1.
P. S. 130, § 1.
1830, 265, § 2.
18 Pick. 24.
19 Pick. 336.
1 Cush. 525.
4 Cush. 408.

SECTION 1. Administration of the estate of a person deceased intestate shall be granted to one or more of the persons hereinafter mentioned, who shall, subject to the provisions of the following section, be entitled thereto as follows: —

First, His widow or his next of kin, or the widow jointly with the next of kin, as the probate court may determine.

Second, If the deceased was a married woman, her husband, if he is competent and willing to undertake the trust, unless it is necessary or proper to appoint some other person.

Third, If all said persons are incompetent or evidently unsuitable for the discharge of the trust, or renounce the administration, or if without sufficient cause they neglect for thirty days after the death of the intestate to take administration of his estate, one or more of the principal creditors, after public notice upon the petition.

Fourth, If there is no such creditor willing and competent to undertake the trust, any suitable person.

Fifth, If there is no widow, husband or next of kin within this commonwealth, a public administrator in preference to creditors.

— to next of
kin without
notice.
1885, 260.
1890, 265, § 1.

SECTION 2. Administration of the estate of an intestate may be granted to one or more of his next of kin or any suitable person, if his widow and all his next of kin resident in the commonwealth, who are of full age and legal capacity, consent in writing

5 thereto. Notice of the petition may be dispensed with as if all
6 parties entitled thereto had signified their assent or waived notice.

1 SECTION 3. Administration shall not be originally granted after
2 the expiration of twenty years from the death of the testator or
3 intestate, except in cases expressly authorized by law.

R. S. 64, § 13. G. S. 94, § 3. P. S. 130, § 3. 6 Cnsh. 493. 146 Mass. 155.

Administration not to be granted after twenty years. 1783, 36, § 10. 1817, 190, § 17.

1 SECTION 4. If administration has not been taken on the estate
2 of a testator or intestate within twenty years after his decease,
3 and any property or claim or right thereto remains undistributed
4 or thereafter accrues to such estate and remains to be administered,
5 original administration may for cause be granted, but such admin-
6 istration shall affect no other property.

— exception. 1848, 309. G. S. 94, § 4. P. S. 130, § 4. 1885, 242. 1889, 192. 130 Mass. 83.

1 SECTION 5. If, after the granting of letters of administration as
2 upon an intestate estate, a will of the person deceased is duly
3 proved and allowed, such letters shall be revoked: and the exec-
4 utor or an administrator with the will annexed may demand, collect
5 and sue for all the personal property of the deceased which remains
6 unadministered.

— to be revoked on probate of a will. 1817, 190, § 14. R. S. 64, § 16. G. S. 94, § 5. P. S. 130, § 5.

ADMINISTRATION WITH THE WILL ANNEXED.

1 SECTION 6. If no executor is named in a will, or if all the exec-
2 utors therein named are dead or incompetent or refuse to accept
3 the trust, or if, after being duly cited for the purpose, the executor
4 neglects to accept the trust, or neglects for twenty days after the
5 probate of the will to give bond according to law, the court shall
6 commit administration of the estate, with the will annexed, to such
7 person as would have been entitled thereto if the deceased had died
8 intestate; but after the expiration of said twenty days, and before
9 letters of administration with the will annexed have been granted,
10 the court may grant letters testamentary to any person named as
11 executor who gives the bond required by law.

— with the will annexed. 1692-3, 14, § 2. 1783, 24, § 16. R. S. 63, § 5. 1855, 111. G. S. 93, § 6. P. S. 130, § 6. 111 Mass. 331.

1 SECTION 7. If a person named as executor is at the time of the
2 probate of the will under the age of twenty-one years, administra-
3 tion with the will annexed may be granted during his minority,
4 unless there is another executor who accepts the trust.

R. S. 63, § 6.

G. S. 93, § 7.

P. S. 130, § 7.

— with the will annexed may be granted when executor is a minor. 1783, 24, § 17.

ADMINISTRATION DE BONIS NON.

1 SECTION 8. If a sole or surviving executor or administrator
2 dies, resigns or is removed before having fully administered an
3 estate, and there is personal property of the deceased not adminis-
4 tered to the amount of twenty dollars, or debts to that amount
5 remaining due from the estate, or anything remaining to be per-
6 formed in execution of the will, or if there is an order of distribu-
7 tion in accordance with the provisions of section twenty-six of
8 chapter one hundred and fifty, the probate court shall grant letters
9 of administration, with the will annexed, or otherwise as the case
10 may require, to a suitable person to administer the goods and estate
11 of the deceased not already administered.

— de bonis non. 1723-4, 3. 1782, 25, §§ 1-3. 1783, 24, § 19; 36, § 10. 1817, 190, § 17. R. S. 63, §§ 7, 10; 64, §§ 14, 15. 1843, 97. G. S. 101, §§ 1, 2, 5. P. S. 130, § 9. 1890, 408, § 2. 2 Mass. 168. 2 Pick. 360. 3 Met. 187.

SPECIAL ADMINISTRATION.

Appointment
of special ad-
ministrators.
1834, 174, § 1.
R. S. 64, § 6.
G. S. 94, § 6.
1876, 200, §§ 1, 4.
P. S. 130, § 10.

SECTION 9. If for any cause the judge of probate decides that it is necessary or expedient, he may, at any time and place, with or without notice, appoint a special administrator who, in case of an appeal from the decree appointing him, shall nevertheless proceed in the execution of his duties until it is otherwise ordered by the supreme judicial court, and may in like manner discharge him. Such appointment and discharge shall be entered forthwith on the records of the court and notice thereof given to the executor or administrator, if any.

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Powers and
duties of
special admin-
istrators.
1834, 174, § 2.
R. S. 64, § 8.
1858, 122.
G. S. 94, § 8.
P. S. 130, § 12.

SECTION 10. A special administrator shall collect all the personal property of the deceased and shall preserve the same for the executor or administrator when appointed, and for that purpose may commence and maintain suits. If he is appointed by reason of delay in granting letters testamentary, the court may authorize him to take charge of the real property of the deceased or of any part thereof, and to collect the rents, make necessary repairs and do all other things which it may consider needful for the preservation of such real property and as a charge thereon. He shall receive such compensation for his services as the court allows.

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Same subject.
1834, 174, § 2.
R. S. 64, § 8.
1858, 122.
G. S. 94, § 8.
P. S. 130, § 12.
1898, 414.
1899, 301.

SECTION 11. The probate court may, upon such notice as it considers reasonable, authorize or require a special administrator to sell or do such other acts relative to any property or estate in his charge as in the opinion of the court said property or estate may require; but the provisions of this section shall not give to the special administrator other or greater powers than an administrator, except that he may be authorized to continue the business of the deceased for the benefit of his estate.

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Advancements
to widow or
children;
appeal.
1859, 143, §§ 1-5.
G. S. 94, §§ 9, 10.
P. S. 130, §§ 13,
14.
1899, 311.
109 Mass. 146.
160 Mass. 232.

SECTION 12. Upon the petition of the widow or of any child of the deceased, the probate court may, after notice, make a reasonable allowance out of the real or personal property in the hands of a special administrator appointed on account of the pendency of a petition relative to the probate of a will or the appointment of an administrator or of an administrator with the will annexed, as an advancement for the support of such widow or children, not exceeding such portion of the estate as they would finally be entitled to. An appeal from a decree relative to such allowance shall not prevent the payment of the allowance, if the petitioner gives bond to the special administrator, with sureties approved by the court and conditioned to repay it if the decree is reversed.

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Payment of
certain ex-
penses and
debts.
1859, 143, § 6.
G. S. 94, § 11.
P. S. 130, § 15.
1884, 291.
1897, 199.

SECTION 13. A special administrator may by leave of the probate court pay from the personal property in his hands the expenses of the last sickness and funeral of the deceased, the expenses incurred by the executor named in the will of a deceased person in proving the will in the probate court or in sustaining the proof thereof in the supreme judicial court and also, after notice, such debts due from the deceased as the probate court may approve.

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1 SECTION 14. Upon the granting of letters testamentary or of Powers of
2 administration, the powers of the special administrator shall cease. special admin-
3 Upon the termination of his powers, the special administrator shall istrator to
4 forthwith deliver to the executor or administrator or to such person cease on ap-
5 as is otherwise lawfully authorized to receive it all the estate of the pointment of
6 deceased in his hands; and the executor or administrator may be executor, etc.
7 admitted to prosecute a suit commenced by the special administrator 1834, 174, § 3.
8 in like manner as an administrator de bonis non may prosecute a R. S. 64, § 9.
9 suit commenced by a former executor or administrator. G. S. 94, § 12.
P. S. 130, § 16.

1 SECTION 15. A special administrator shall not be liable to an Effect of
2 action by a creditor of the deceased; and the time of limitation for special admin-
3 all actions against the estate shall begin to run only after the grant- istration on
4 ing of letters testamentary or of administration in the usual form claims of
5 in like manner and subject to the same conditions as if special ad- creditors.
6 ministration had not been granted; but if an appeal is taken from 1834, 174, § 4.
7 the decree of the probate court appointing an executor or adminis- R. S. 64, § 10.
8 trator the time shall run in like manner and subject to the same G. S. 94, § 13.
9 conditions, if the decree is affirmed, from the time of the affirmation P. S. 130, § 17.
10 if the bond has been filed, and, if not, from the date of the filing of 175 Mass. 483.
11 the bond; if the decree is reversed, from the time when an appoint-
12 ment is finally made or affirmed and the bond is filed.

CHAPTER 138.

OF PUBLIC ADMINISTRATORS.

1 SECTION 1. There shall be in each county one or more public Appointment
2 administrators, appointed by the governor with the advice and con- of public ad-
3 sent of the council, who shall hold office during the pleasure of the ministrators.
4 governor. 1839, 142, § 1.
G. S. 95, § 1.
P. S. 131, § 1.

1 SECTION 2. Such administrators shall, except as hereinafter pro- Their duties.
2 vided, take out letters of administration and faithfully administer 1833, 109.
3 upon the estates of persons who die intestate within their county R. S. 64, § 4.
4 or elsewhere, leaving property in such county to be administered 1830, 142, § 1.
5 and not leaving a known husband, widow or heir in this common- 1840, 40.
6 wealth. G. S. 95, § 2.
P. S. 131, § 2.

1 SECTION 3. Administration shall not be granted to a public ad- Public admin-
2 ministrator when the husband, widow or an heir of the deceased, istrators not to
3 in writing, claims the right of administration or requests the ap- act when heir,
4 pointment of some other suitable person to the trust, if such etc., claims the
5 husband, widow, heir or other person accepts the trust and gives right.
6 the bond required. 1853, 419.
G. S. 95, § 3.
P. S. 131, § 3.

1 SECTION 4. If, after the granting of letters of administration to Powers to
2 a public administrator and before the final settlement of the estate, cease when
3 the husband, widow or an heir of the deceased, in writing, claims will is proved.
4 the right of administration or requests the appointment of some 1817, 190, § 14.
5 other suitable person to the trust, or if a will of the deceased is R. S. 64, § 16.
1839, 142, § 2.
G. S. 95, §§ 4, 5.
P. S. 131, § 4.

thereafter proved and allowed, the probate court shall grant letters of administration or letters testamentary accordingly; and when the person to whom such letters are so granted gives the bond required by law the powers of the public administrator over the estate shall cease.

Surrender of letters on appointment of successor.
1817, 190, § 14.
R. S. 64, § 16.
1839, 142, § 2.
G. S. 95, § 5.
P. S. 131, § 5.

SECTION 5. A public administrator shall, upon the appointment and qualification of an executor or administrator as his successor, surrender into the probate court his letters of administration in such case with an account under oath of his doings therein; and, upon a just settlement of such account, shall pay over and deliver to his successor all money remaining in his hands, and all property, effects and credits of the deceased not then administered.

Bond.
1839, 142, §§ 1, 2.
G. S. 95, § 6.
P. S. 131, § 6.

SECTION 6. A public administrator shall give bond payable to the judge of the probate court and his successors for the faithful performance of his duties in like manner as other administrators, with the further condition to comply with the provisions of the preceding section.

General bond.
1849, 123, §§ 2, 3.
G. S. 95, § 7.
P. S. 131, § 7.

SECTION 7. Instead of a separate bond for each estate, a public administrator may give a general bond for the faithful administration of all estates on which letters of administration may be granted to him as such public administrator. Such bond shall be given with sufficient surety or sureties, in such sum as the probate court may order, payable to the judge of said court and his successors, and with condition substantially as follows:—

First, To make and return to the probate court, within three months from the time of granting to him, as public administrator, letters of administration on the estate of a person deceased, a true inventory of all the real and personal property of such person which at the time of making such inventory shall have come to his possession or knowledge.

Second, To administer according to law all personal property of every such person which may come to his possession or of any person for him, and also the proceeds of any of the real property of such person which may be sold by him.

Third, To render upon oath a true account of his administration of every such estate at least once a year until the trust is fulfilled, unless he is excused therefrom in any year by the court; and also to render such account at such other times as the court may order.

Fourth, To pay the balance of every such estate remaining in his hands upon the settlement of his accounts to such persons as the court may direct; and when such estate has been fully administered to deposit with the treasurer and receiver general the whole amount remaining in his hands.

Fifth, Upon the appointment and qualification in any case of an executor or administrator as his successor, to surrender into the probate court his letters of administration in such case with an account under oath of his doings therein and, upon a just settlement of such account, to pay over and deliver to such successor all money remaining in his hands, and all property, effects and credits of the deceased not then administered.

1 SECTION 8. A public administrator who gives such general bond
2 shall, at the probate court first held in his county after the first day
3 of January in each year, render an account under oath of all bal-
4 ances of estates then remaining in his hands; and the court may
5 at any time require additional sureties to be furnished upon such
6 administrator's bond or may require a new bond to be given.

Annual ac-
counts to be
rendered, if
general bond
is given.
1849, 123, § 3.
G. S. 95, § 8.
P. S. 131, § 8.

1 SECTION 9. Periods of time which by law run in other cases
2 from the time of giving bond by an administrator shall, when such
3 general bond is given, run as to each estate from the date of the
4 letters of administration.

Limitation of
actions if
general bond
is given.
1849, 123, § 3.

G. S. 95, § 9.

P. S. 131, § 9.

1 SECTION 10. Public administrators may be licensed to sell real
2 property for the payment of debts and shall, except as herein other-
3 wise provided, administer estates and render their accounts in the
4 same manner as other administrators.

Public admin-
istrators may
sell real prop-
erty for pay-
ment of debts,
etc.
1839, 142, §§ 1, 3.

1849, 123, §§ 2, 3.

G. S. 95, § 10.

P. S. 131, § 10.

1 SECTION 11. After three years from the date of letters of ad-
2 ministration to a public administrator, the probate court may, if
3 it appears to be for the interest of all concerned, authorize such
4 administrator to sell the real property of the deceased, although
5 such sale is not necessary for the payment of debts. In such case
6 the public administrator shall proceed in the same manner as other
7 administrators licensed to sell real property for the payment of
8 debts.

Sale of real
property.
1839, 142, § 4.
G. S. 95, § 11.
1880, 152.
P. S. 131, § 11.

1 SECTION 12. When an estate has been fully administered by a
2 public administrator, he shall deposit the balance of such estate
3 remaining in his hands with the treasurer and receiver general,
4 who shall receive and hold it for the benefit of those who may have
5 lawful claims thereon.

Public admin-
istrators to de-
posit balances
of estates with
the treasurer.
1839, 142, §§ 1, 4.
G. S. 95, § 12.

P. S. 131, § 12.

7 Allen, 509.

1 SECTION 13. The probate courts shall require every public
2 administrator in their respective counties to render an account of
3 his proceedings under any letters of administration at least once in
4 each year until the trust has been fulfilled. And when, upon a
5 final settlement of an estate, it appears that money remains in the
6 hands of such administrator which by law should have been de-
7 posited with the treasurer and receiver general, the court shall
8 certify that fact and a statement of the amount so withheld to said
9 treasurer and receiver general, who, unless such deposit is made
10 within one month after the receipt of such notice, shall cause the
11 bond of the administrator to be prosecuted for the recovery of such
12 money.

Annual
accounts.
1839, 142, §§ 4, 5.
G. S. 95, § 13.
P. S. 131, § 13.

1 SECTION 14. If, at any time within six years after a public ad-
2 ministrator has made deposit with the treasurer and receiver gen-
3 eral of the balance of an estate remaining in his hands, any person
4 applies to the probate court which granted letters of administration
5 on such estate, and makes it appear that he is legally entitled by
6 the will of the deceased or otherwise to the administration thereof,
7 the court shall grant administration thereof, or, upon probate of

Heirs, etc.,
may take
administration
after deposit in
state treasury.
1839, 142, § 6.
G. S. 95, § 14.
P. S. 131, § 14.

such will, shall grant letters testamentary to such applicant or at his request to some other suitable person ; but before granting such administration, the court shall order personal notice of the application to be served, at least fourteen days before the hearing, upon a public administrator of the county, who shall appear in behalf of the commonwealth.

Treasurer
and receiver
general to pay
over to execu-
tor, etc., if
appointed.
1839, 142, § 6.
G. S. 95, § 15.
P. S. 131, § 15.

SECTION 15. After the expiration of thirty days from the appointment of an executor or administrator as provided in the preceding section, if no appeal is claimed by any person interested, the treasurer and receiver general shall pay over to such executor or administrator all money deposited in the treasury to the credit of such estate, to be administered in like manner as the estates of other deceased persons.

Proceedings on
death, etc., of
public admin-
istrator.
1849, 123, § 1.
G. S. 95, § 16.
P. S. 131, § 16.

SECTION 16. Upon the death, resignation or removal of a public administrator, the probate court shall issue a warrant to some other public administrator in the same county, upon his application therefor, requiring him to examine the accounts of such late public administrator relative to the estates on which he has taken out letters of administration, and to return into the probate court a statement of all of such estates that are not fully administered and of the balance of each estate which remained in the hands of such public administrator at the time of his death, resignation or removal. And thereupon the court shall issue to the public administrator making the return, upon his giving the requisite bond, letters of administration upon such of said estates as are not already administered, although the personal property remaining may not amount to twenty dollars.

District at-
torneys to
prosecute in
case of neglect,
etc., by public
administrators.
1846, 211.
G. S. 95, § 17.
1874, 165.
P. S. 131, § 17.

SECTION 17. If a public administrator neglects to return an inventory, to settle an account or to perform any other duty incumbent on him in relation to an estate, and there appears to be no heir entitled to such estate, the district attorney for the district within which the administrator received his letters shall, in behalf of the commonwealth, prosecute all suits and do all acts necessary and proper to insure a prompt and faithful administration of the estate and the payment of the proceeds thereof into the treasury of the commonwealth ; and if no heir has, within two years after the granting of letters of administration, appeared and made claim in the probate court for his interest in such estate, it shall be presumed that there is no such heir and the burden of proving his existence shall be upon the public administrator.

Estates of less
than twenty
dollars, how
disposed of.
1874, 254, § 1.
P. S. 131, § 18.
1883, 264.

SECTION 18. If the total property of an intestate which has come into the possession or control of a public administrator is of a value less than twenty dollars, unless the same is the balance of an estate received from a prior public administrator, he shall forthwith reduce all such property into money, not taking administration thereon, and shall deposit such money, first deducting his reasonable expenses and charges, with the treasurer and receiver general, who shall receive and hold it for the benefit of any persons who may have legal claims thereon. Such claims may be presented to

10 the auditor of the commonwealth within one year from such pay-
11 ment to the treasurer and receiver general and the auditor shall
12 examine such claims and allow such as may be proved to his satis-
13 faction and upon the expiration of the year shall forthwith certify
14 the same to the governor and council for payment of the whole of
15 the claims or such proportion thereof as the funds will allow.

1 SECTION 19. A public administrator, upon making such deposit,
2 shall file with the treasurer and receiver general a true and particu-
3 lar account, under oath, of all his dealings, receipts, payments and
4 charges on account of the property from which the money so de-
5 posited proceeds, including the name of the intestate, if known to
6 him, and the treasurer and receiver general shall thereupon deliver
7 to him a receipt for such money. Such deposit shall exempt the
8 public administrator making it from all responsibility for or on ac-
9 count of the money so deposited.

Account of
estate of less
than twenty
dollars.
1874, 254, § 2.
P. S. 131, § 19.

CHAPTER 139.

GENERAL PROVISIONS RELATIVE TO EXECUTORS AND ADMINISTRATORS.

- SECTIONS 1-4. — Notice of Appointment.
- SECTIONS 5-7. — Inventories and Appraisals.
- SECTIONS 8-10. — Agents of Non-Resident Executors and Administrators.
- SECTIONS 11-13. — Removal and Resignation.
- SECTIONS 14, 15. — Executors in Their Own Wrong

NOTICE OF APPOINTMENT.

1 SECTION 1. An executor or administrator shall, within three
2 months after giving bond for the performance of his trust, cause
3 notice of his appointment to be posted in two or more public places
4 in the city or town in which the deceased last dwelt ; or he may be
5 required by the probate court to give notice by publication in a
6 newspaper, or in such other manner as the court may order.

Notice of ap-
pointment of
executor or
administrator.
1788, 66, § 1.
R. S. 66, §§ 1, 23.
G. S. 97, §§ 1, 13.
P. S. 132, § 1.
97 Mass. 401.

1 SECTION 2. An affidavit of the executor or administrator, or of
2 a person employed by him to give such notice, filed and recorded
3 with a copy of the notice in the registry of probate, or such affi-
4 davit made by any person and so filed and recorded with such
5 copy by permission of the court upon satisfactory evidence that the
6 notice was given as ordered, shall be admitted as evidence of the
7 time, place and manner in which the notice was given.

Perpetuation
of evidence of
notice.
1788, 66, § 1.
1830, 145.
R. S. 66, § 2.
1855, 132.
G. S. 97, § 2.
1876, 71, 76.
P. S. 132, § 2.
1888, 148, § 1;
380.

13 Gray, 336. 16 Gray, 363. 104 Mass. 277.

1 SECTION 3. If by accident or mistake the notice is not given, or
2 if the evidence that it was given is not perpetuated as provided
3 in the preceding section, the probate court may, upon the petition
4 of the executor or administrator, order such notice to be given at
5 any time afterward. In such case the periods of time limited for
6 the commencement of actions against executors and administrators
7 and for other purposes, which run from the time of their giving
8 bond, shall run from the time of the passing of such order.

Notice may be
given after
proper time,
when.
R. S. 66, § 25.
G. S. 97, § 3.
P. S. 132, § 3.

Liability for
omission to
give notice.
R. S. 66, § 26.
G. S. 97, § 4.
P. S. 132, § 4.

SECTION 4. An order under the provisions of the preceding section shall not exempt an executor or administrator or his sureties from any liability for damages which may be incurred by reason of the omission to give notice within the three months. 6 Allen, 498.

INVENTORIES AND APPRAISALS.

Inventories.
1703-4, 12, § 1.
1719-20, 10, § 1.
1817, 190, § 14.
R. S. 65, § 1.
G. S. 96, § 1.
P. S. 132, § 5.
152 Mass. 412.

SECTION 5. Every executor, except one who gives bond under the provisions of section two of chapter one hundred and forty-nine, and every administrator shall, within three months after his appointment, make under oath and return to the probate court a true inventory of the real and personal property of the deceased which at the time of making such inventory shall have come to his possession or knowledge.

Appraisers.
1719-20, 10, § 1.
1783, 32, § 14.
1817, 190, § 14.
R. S. 65, § 2.
G. S. 96, § 2.
P. S. 132, § 6.

SECTION 6. The property comprised in the inventory shall be appraised in any county by three suitable, disinterested persons appointed by the probate court or a disinterested justice of the peace may appoint such appraisers of any part of the estate which may be in the county in which such justice resides. The appraisers shall be sworn to the faithful performance of their duties.

Form of order
to appraisers.
R. S. 65, § 3.
G. S. 96, § 3.
P. S. 132, § 7.

SECTION 7. When appraisers are appointed by a justice of the peace, he shall issue an order to them, in substance as follows:—

, ss.

To of in said county. You are hereby appointed to appraise on oath the estate and effects of , late of , deceased which may be in said county. When you have performed that service, you will deliver this order and your doings in pursuance thereof to , executor (or administrator, as the case may be) of said deceased, that he may return the same to the probate court for the county of

Given under my hand this day of in the year _____, Justice of the Peace.

AGENTS OF NON-RESIDENT EXECUTORS AND ADMINISTRATORS.

Agent of
non-resident
executor or
administrator.
1879, 180, §§ 1, 2,
6.
P. S. 132, §§ 8,
9, 13.
1893, 118.
1901, 37.

SECTION 8. An executor or administrator who is appointed in, but resides out of, this commonwealth shall not enter upon the duties of his trust nor be entitled to receive his letter of appointment until he shall, by a writing filed in the registry of probate for the county in which he is appointed, have appointed an agent residing in this commonwealth, and, by such writing, shall have agreed that the service of any legal process against him as such executor or administrator, or that the service of any such process against him in his individual capacity in any action founded upon or arising out of any of his acts or omissions as such executor or administrator shall, if made on said agent, have like effect as if made on himself personally within the commonwealth, and such service shall have such effect. Said writing and also the notice of appointment of such executor or administrator shall state the name and address of the agent. An executor or administrator who, after his appointment, removes from, and resides without, the commonwealth shall so appoint a like agent.

1 SECTION 9. If an agent appointed under the provisions of the
 2 preceding section dies or removes from the commonwealth before
 3 the final settlement of the accounts of his principal, another appoint-
 4 ment shall be made and filed as above provided, and the powers
 5 of an agent appointed under the provisions of this and of the pre-
 6 ceding section shall not be revoked prior to the final settlement
 7 of the estate unless another appointment shall be made as before
 8 provided.

New appoint-
 ment of agent.
 1879, 180, §§ 3, 4.
 P. S. 132, §§ 10,
 11.

1 SECTION 10. Neglect or refusal by an executor or administrator
 2 to comply with any provision of the two preceding sections shall
 3 be cause for removal.

Failure to
 appoint agent.
 1879, 180, § 5.
 P. S. 132, § 12.

REMOVAL AND RESIGNATION.

1 SECTION 11. If an executor or administrator becomes insane or
 2 otherwise incapable of performing the trust, or is unsuitable therefor,
 3 or if an executor or administrator who resides out of this common-
 4 wealth, having been duly cited by the probate court, neglects to
 5 render his accounts and to settle the estate, the probate court may
 6 remove him; and thereupon the other executor or administrator, if
 7 any, may proceed in performing the trust as if the one removed
 8 were dead or, if there is no other executor or administrator, the
 9 court may appoint an administrator as provided in section eight of
 10 chapter one hundred and thirty-seven.

Removal of
 executor or
 administrator.
 1783, 24, § 19.
 1808, 98, § 1.
 R. S. 63, § 7;
 64, § 15.
 G. S. 101, § 2.
 P. S. 132, § 14.
 11 Met. 104.
 1 Allen, 354.
 10 Allen, 124.
 137 Mass. 547.

1 SECTION 12. If an executor or administrator is removed or if
 2 letters of administration are revoked, all previous sales, whether of
 3 real or personal property, made lawfully by the executor or ad-
 4 ministrator and with good faith on the part of the purchaser and all
 5 other lawful acts done by such executor or administrator shall
 6 remain valid and effectual.

Acts of exec-
 utor or admin-
 istrator before
 removal to be
 valid.
 R. S. 70, § 20.
 G. S. 101, § 3.
 P. S. 132, § 15.

1 SECTION 13. An executor or administrator may resign his trust,
 2 when it appears to the probate court proper to allow him so to do.

Resignation of
 executor or
 administrator.

1843, 97.

G. S. 101, § 5.

P. S. 132, § 16.

12 Mass. 358.

EXECUTORS IN THEIR OWN WRONG.

1 SECTION 14. Whoever injuriously intermeddles with any personal
 2 property of a deceased person, without being thereto authorized by
 3 law, shall be liable as an executor in his own wrong to the persons
 4 aggrieved.

Executors in
 their own
 wrong.
 1682-3, 14, § 3.
 1783, 24, § 16.
 R. S. 64, § 11.

G. S. 94, § 14.

P. S. 132, § 17.

114 Mass. 420.

1 SECTION 15. An executor in his own wrong shall be liable to the
 2 rightful executor or administrator for the full value of the per-
 3 sonal property of the deceased taken by him and for all damages
 4 caused by his acts to the estate; and he shall not be allowed to
 5 retain or deduct any part of such estate, except for funeral expenses
 6 or debts of the deceased or other charges actually paid by him and
 7 which the rightful executor or administrator might have been com-
 8 pelled to pay.

Liability of
 such exec-
 utors.
 R. S. 64, § 12.
 G. S. 94, § 15.
 P. S. 132, § 18.
 97 Mass. 178.
 108 Mass. 381.

CHAPTER 140.

OF ALLOWANCES TO WIDOWS AND CHILDREN, THE DISTRIBUTION OF
THE ESTATES OF INTESTATES AND OF ADVANCEMENTS.

SECTIONS 1, 2. — Allowances to Widows and Children.

SECTION 3. — Distribution.

SECTIONS 4-9. — Advancements.

ALLOWANCES TO WIDOWS AND CHILDREN.

Apparel of
widow and
children.
Quarantine.
1783, 36, § 3.
1802, 93.
1805, 90, § 2.
1816, 95, § 1.
R. S. 60, § 16;
65, § 4.

SECTION 1. The articles of apparel and the ornaments of the widow and minor children of a deceased person shall belong to them respectively. The widow may remain in the house of her husband for not more than six months next succeeding his death without being chargeable for rent.

1838, 145, § 1.
G. S. 90, § 18; 96, § 4.

P. S. 124, § 3; 135, § 1.
1899, 479, §§ 2, 5.

1900, 450, § 1.
119 Mass. 598.

Allowance of
necessaries.
1710-11, 2, § 2.
1783, 36, § 3.
1802, 93.
1805, 90, § 2.
1816, 95.
1832, 40.
R. S. 60, § 16;
65, §§ 4-6.
1838, 145, § 2.
1842, 15.
G. S. 96, § 5.
P. S. 135, § 2.
1899, 479, § 6.
1900, 450, § 2.
6 Cush. 20.
1 Gray, 518.
5 Gray, 24.
2 Allen, 310.
13 Allen, 120,
207.
110 Mass. 461.
117 Mass. 27.
123 Mass. 443.
127 Mass. 111.
130 Mass. 376.

SECTION 2. Such parts of the personal property of a deceased person as the probate court, having regard to all the circumstances of the case, may allow as necessaries to his widow for herself and for his family under her care or, if there is no widow, to his minor children, not exceeding one hundred dollars to any child, and also such provisions and other articles as are necessary for the reasonable sustenance of his family, and the use of his house and of the furniture therein, for six months next succeeding his death, shall not be taken as assets for the payment of debts, legacies or charges of administration. After exhausting the personal property, real property may be sold to provide the amount of allowance decreed, in the same manner as it is sold for the payment of debts, if a decree authorizing such sale is made, upon the petition of any party in interest, within two years after the approval of the bond of the executor or administrator.

139 Mass. 144. 155 Mass. 141, 153. 168 Mass. 228.

DISTRIBUTION.

Distribution
of personal
property of
intestates.
C. L. 158, § 3.
1692-3, 14, § 1.
1710-11, 2, § 1.
1734-5, 16.
1783, 36, § 2.
1789, 2, § 1.
1805, 90, §§ 2, 4.
1833, 40.
R. S. 64, § 1.
1845, 208, § 7.
1854, 406, § 3.
G. S. 94, § 16.
1876, 220, § 4.
P. S. 135, § 3.
1882, 141.
1885, 276.
1899, 479, § 7.
1900, 450, §§ 3, 4.
1 Met. 204.
5 Allen, 187.
9 Allen, 234.
13 Allen, 277.
101 Mass. 40.
136 Mass. 54.
137 Mass. 156.

SECTION 3. If a person dies possessed of property not lawfully disposed of by will, it shall be distributed as follows:—

First, The personal property remaining after said allowances shall be applied to the payment of the debts of the deceased and the charges of his last sickness and funeral and of the settlement of his estate.

130 Mass. 178.

139 Mass. 304.

146 Mass. 281.

Second, The residue of the personal property shall be distributed among the persons and in the proportions prescribed for the descent of real property in chapter one hundred and thirty-three, except as otherwise provided herein.

149 Mass. 502.

Third, If the deceased leaves no issue, the surviving husband or widow shall take five thousand dollars and one-half of the remaining personal property and one-half of the remaining real property. If the personal property is insufficient to pay said five thousand dollars, the deficiency shall, upon the petition of any party in interest, be paid from the sale or mortgage, in the manner provided for the payment of debts or legacies, of any interest of the

18 deceased in real property which he could have conveyed at the
19 time of his death.
20 If the deceased leaves issue, a surviving husband or widow
21 shall take one-third of the remaining personal property and one-
22 third of the remaining real property.
23 If the deceased leaves no kindred, a surviving husband or widow
24 shall take the whole of the remaining real and personal property.
25 If the deceased leaves no husband, widow or kindred, the whole
26 of the remaining personal property shall escheat to the common-
27 wealth.

ADVANCEMENTS.

1 SECTION 4. Property, real or personal, which is given by an in-
2 testate in his lifetime as an advancement to a child or other lineal
3 descendant shall be considered as part of the intestate's estate in
4 the division and distribution of such estate among his issue, and
5 shall be taken by such child or other descendant toward his share
6 of such estate; but he shall not be required to restore any part
7 thereof, although it exceeds his share. The widow shall be entitled
8 only to her share in the residue after deducting the value of the
9 advancement.

Advance-
ments treated
as estate of
intestate,
when.
1692-3, 14, § 1.
1805, 90, § 8.
R. S. 61, §§ 6, 7;
64, § 2.
G. S. 91, § 6;
94, § 17.
P. S. 128, §§ 1, 6.
1 Pick. 157.

1 SECTION 5. If such advancement is made in real property, the
2 value thereof shall be considered as part of the real property to be
3 divided; if it is in personal property, it shall be considered as part
4 of the personal property; and if in either case it exceeds the share
5 of real or personal property, respectively, which would have come
6 to the heir so advanced, he shall not restore any part of it, but
7 shall receive so much less out of the other part of the estate as will
8 make his whole share equal to the shares of the other heirs who
9 are in the same degree with him.

Same subject.
R. S. 61, § 8.
G. S. 91, § 7.
P. S. 128, § 2.
16 Mass. 200.

1 SECTION 6. Gifts and grants shall be held to have been made as
2 advancements, if they are expressed in the gift or grant to be so
3 made, or if charged in writing as such by the intestate, or acknowl-
4 edged in writing as such by the party receiving them.

Proof of
advancement.
1783, 36, § 7.
1805, 90, § 3.
R. S. 61, § 9.
G. S. 91, § 8.

P. S. 128, § 3. 22 Pick. 508. 10 Gray, 104. 103 Mass. 164.
14 Pick. 318. 1 Gray, 507. 13 Allen, 334. 120 Mass. 553.

1 SECTION 7. If the value of an advancement is expressed in the
2 conveyance, in the charge thereof made by the intestate or in the
3 acknowledgment by the person receiving it, such value shall be
4 adopted in the division and distribution of the estate; otherwise
5 it shall be determined according to the value when the property
6 was given.

Value of ad-
vancement,
how ascer-
tained.
1805, 90, § 3.
R. S. 61, § 10.
G. S. 91, § 9.
P. S. 128, § 4.
17 Mass. 356.

120 Mass. 559.

1 SECTION 8. If a child or other lineal descendant who has re-
2 ceived an advancement dies before the intestate, leaving issue, the
3 advancement shall be considered as part of the intestate's estate in
4 the division and distribution of such estate, and the value thereof
5 shall be taken by the representative of the heir to whom the ad-
6 vancement was made toward his share of the estate, as if the
7 advancement had been made directly to him.

Death of per-
son receiving
advancement
before intes-
tate.
R. S. 61, § 11.
G. S. 91, § 10.
P. S. 128, § 5.

Determination
of questions
of advance-
ments.
R. S. 103, §§ 62,
63.
G. S. 136, § 66.
P. S. 128, § 7.
16 Mass. 167,
200.
102 Mass. 355.

SECTION 9. The probate court in which the estate of a deceased person is settled may hear and determine all questions of advancements arising relative to such estate, or such questions may be heard and determined upon a petition for partition either in the superior court or the probate court; but if such question arises upon a petition for partition, the court may suspend proceedings until the question has been decided in the probate court in which the estate of the deceased is settled.

CHAPTER 141.

OF THE PAYMENT OF DEBTS, LEGACIES AND DISTRIBUTIVE SHARES.

SECTIONS 1-8. — Payment of Debts.

SECTIONS 9-18. — Limitation of Actions by Creditors.

SECTIONS 19-25. — Payment of Legacies and Distributive Shares.

SECTIONS 26-32. — Liability of Heirs, etc., after Settlement by Executor, etc.

PAYMENT OF DEBTS.

Executor, etc.,
not liable to
action for a
year after
giving bond.
1788, 66, § 2.
R. S. 66, § 10.
G. S. 97, § 16.
P. S. 136, § 1.
116 Mass. 436.
134 Mass. 155.

SECTION 1. An executor or administrator shall not be held to answer to an action by a creditor of the deceased which is commenced within one year after his giving bond for the performance of his trust, unless such action is brought for the recovery of a demand which would not be affected by the insolvency of the estate or, after the estate has been represented insolvent, for the purpose of ascertaining a contested claim.

— may pay
creditors, if
assets suffi-
cient for all
claims pre-
sented within
the year.
1823, 144, § 2.
R. S. 66, § 11.
G. S. 97, § 17.
P. S. 136, § 2.

SECTION 2. If an executor or administrator who has given due notice of his appointment does not within one year thereafter have notice of demands against the estate of the deceased which authorize him to represent such estate to be insolvent, he may, after the expiration of said year, pay the debts due from the estate and shall not be personally liable to any creditor in consequence of such payments made before notice of such creditor's demand.

Payment a
defence
against further
claims, when.
1823, 144, § 2.
R. S. 66, § 12.
G. S. 97, § 18.
P. S. 136, § 3.
9 Met. 180.

SECTION 3. If an executor or administrator pays, under the provisions of the preceding section, before notice of the demand of any other creditor, the whole of the estate and effects of the deceased, he shall not be required in consequence of such notice to represent the estate insolvent, but in an action against him he shall be discharged upon proving such payments.

Extent of lia-
bility if residue
is insufficient
to meet new
claims.
1823, 144, § 3.
R. S. 66, § 13.
G. S. 97, § 19.
P. S. 136, § 4.
11 Met. 238.
4 Gray, 514.
7 Gray, 167.
9 Allen, 149.
130 Mass. 385.

SECTION 4. If an executor or administrator pays, under the provisions of section two, so much of the estate and effects of the deceased that the remainder is insufficient to satisfy a demand of which he afterward has notice, he shall be liable on such last-mentioned demand for only so much as may then remain. If two or more such demands are exhibited, which together exceed the amount of assets remaining in his hands, he may represent the estate insolvent, and shall, pursuant to a decree of the probate court,

9 divide and pay over what remains in his hands among the creditors
10 who prove their debts under the commission of insolvency ; but the
11 creditors of the deceased who have been previously paid shall not
12 be liable to repay any part of the amount received by them.

1 SECTION 5. If it appears, upon the settlement of the account of
2 an executor or administrator in the probate court, that the whole
3 estate and effects which have come to his hands have been exhausted
4 in paying the charges of administration and debts or claims entitled
5 by law to a preference over the common creditors of the deceased,
6 such settlement shall be a bar to an action brought against him by
7 a creditor who is not entitled to such preference, although the
8 estate has not been represented insolvent.

Payment of preferred claims by bar actions by common creditors, when.
1823, 144, § 1.
R. S. 66, § 14.
G. S. 97, § 20.
P. S. 136, § 5.
142 Mass. 227.
160 Mass. 499.
173 Mass. 112.

1 SECTION 6. If a debt claimed by an executor or administrator as
2 due to him from the deceased is disputed by any person interested
3 in the estate, the claimant shall file in the probate court a statement
4 of his claim in writing, setting forth distinctly and fully the nature
5 and grounds thereof ; and the same may then be submitted under an
6 order of the court to one or more arbitrators, if the claimant and the
7 party objecting agree upon the arbitrators to be appointed. The
8 court shall have the powers of courts of common law to discharge
9 the rule by which the claim is referred, to reject and disallow the
10 award or to recommit it to the arbitrators. The award of such arbi-
11 trators, if accepted by the probate court, shall be final and conclusive.

Settlement of debts of the deceased to his executor, etc.
1789, 11, § 1.
R. S. 66, § 18.
G. S. 97, § 26.
P. S. 136, § 6.
9 Met. 329.
149 Mass. 520.
157 Mass. 160,
536.

1 SECTION 7. If the parties do not agree upon the arbitrators, or
2 if the award is not confirmed by the probate court, the court shall
3 decide upon the claim. Upon appeal to the supreme judicial court,
4 upon motion of either party or by order of the court, an issue shall
5 be framed and tried by a jury as other issues in civil actions are
6 tried ; and the verdict thereon, when duly allowed and recorded,
7 shall be conclusive.

Same subject.
R. S. 66, § 19.
G. S. 97, § 27.
P. S. 136, § 7.
9 Met. 329.

1 SECTION 8. If one of two or more persons who are indebted
2 upon a joint contract, or upon a judgment founded on such contract,
3 dies, his estate shall be liable therefor as if the contract had been
4 joint and several or as if the judgment had been against him alone.

Liability of estate of deceased jointly liable.
1799, 57.
R. S. 66, § 27.
G. S. 97, § 28.

P. S. 136, § 8.	4 Met. 537.	7 Allen, 112.	120 Mass. 137.
2 Mass. 572.	11 Cush. 152.	119 Mass. 361.	124 Mass. 219, 367.

LIMITATION OF ACTIONS BY CREDITORS.

1 SECTION 9. An executor or administrator, after having given
2 due notice of his appointment, shall not be held to answer to an
3 action by a creditor of the deceased which is not commenced within
4 two years from the time of his giving bond for the performance of
5 his trust, except as hereinafter provided.

— of executor, etc., to actions by creditors.
1788, 66, § 3.
1791, 28, § 2.
R. S. 66, § 3.
1852, 294, § 1.
1855, 283.
G. S. 97, § 5.

15 Mass. 6.	12 Allen, 330.	117 Mass. 222.	149 Mass. 62.
20 Pick. 2.	104 Mass. 277.	121 Mass. 222.	161 Mass. 418.
4 Allen, 359.	112 Mass. 27.	124 Mass. 240.	172 Mass. 356.
8 Allen, 532.	115 Mass. 508.	134 Mass. 115.	173 Mass. 233.
11 Allen, 101.	116 Mass. 447.	142 Mass. 248.	175 Mass. 483.

1 SECTION 10. If the supreme judicial court, upon a bill in equity
2 filed by a creditor whose claim has not been prosecuted within the

Supreme judicial court may relieve after claim barred.

*amended
1914c. 6,
§ 3*

1861, 174, § 2.
P. S. 136, § 10.
123 Mass. 489.
127 Mass. 268.
149 Mass. 253.
160 Mass. 580.
169 Mass. 97.

time limited by the preceding section, is of opinion that justice and equity require it and that such creditor is not chargeable with culpable neglect in not prosecuting his claim within the time so limited, it may give him judgment for the amount of his claim against the estate of the deceased person; but such judgment shall not affect any payment or distribution made before the filing of such bill.

Extension of time for creditors' actions by receipt of new assets.
R. S. 66, § 4.
1852, 204, § 1.
G. S. 97, § 6.
P. S. 136, § 11.
3 Pick. 365.
6 Allen, 372.
9 Allen, 365.
99 Mass. 616.
105 Mass. 229.
117 Mass. 222.
137 Mass. 547.
157 Mass. 358.
163 Mass. 491.

SECTION 11. If new assets come to the hands of an executor or administrator after the expiration of two years from the time of his giving bond, he shall account for and apply the same in like manner as if they had been received within said two years, and shall be liable, on account of such new assets, to an action at law or to a proceeding in the probate court by or for the benefit of a creditor, in like manner as if such assets had been received within the two years, if such action or proceeding is commenced within one year after the creditor has notice of the receipt of such assets, and within two years after they are actually received.

167 Mass. 536.

— if action fails from defect in form, etc.
1855, 157, § 1.
G. S. 97, § 7.
P. S. 136, § 12.
174 Mass. 171.

SECTION 12. If an action commenced against an executor or administrator before the expiration of two years from the time of his giving bond fails of a sufficient service or return by an unavoidable accident; if the writ in such action is abated or defeated in consequence of a defect in the form thereof or of a mistake in the form of the proceeding; if, after a verdict for the plaintiff, the judgment is arrested; or, if a judgment for the plaintiff is reversed on a writ of error; the plaintiff may commence a new action for the same cause at any time within one year after the abatement or other determination of the original action, or after the reversal of the judgment therein.

Provision for creditor whose right of action accrues after the two years.
1788, 66, § 4.
R. S. 66, § 5.
G. S. 97, § 8.
1879, 71, 243.
P. S. 136, § 13.
104 Mass. 577.
131 Mass. 351.
146 Mass. 366.
151 Mass. 601.
154 Mass. 266.
158 Mass. 418.
171 Mass. 386.
172 Mass. 556.
176 Mass. 141.

SECTION 13. A creditor of the deceased, whose right of action does not accrue within two years after the giving of the administration bond, may present his claim to the probate court at any time before the estate is fully administered: and if, upon examination thereof, the court finds that such claim is or may become justly due from the estate, it shall order the executor or administrator to retain in his hands sufficient assets to satisfy the same. But if a person interested in the estate offers to give bond to the alleged creditor with sufficient surety or sureties for the payment of his claim if it is proved to be due, the court may order such bond to be taken, instead of requiring assets to be retained as aforesaid. This section, so far as it relates to claims to become due, shall not apply to an estate which was in process of settlement on the twenty-eighth day of February in the year eighteen hundred and seventy-nine.

Same subject.
R. S. 66, § 6.
G. S. 97, § 9.
1871, 238.
P. S. 136, § 14.

SECTION 14. The decision of the probate court upon the claim of such creditor shall not be conclusive against the executor or administrator or other person interested to oppose the allowance thereof, and he shall not be compelled to pay the same unless it is proved to be due in an action commenced by the claimant within one year after his claim becomes payable, or, if an appeal is taken from the decision of the probate court, in an action commenced

8 within one year after the final determination of the proceedings on
9 such appeal.

1 SECTION 15. The action referred to in the preceding section
2 shall be brought against the executor or administrator, if he has
3 been required to retain assets therefor; otherwise, upon the bond
4 given under the provisions of section thirteen.

R. S. 66, § 7.

G. S. 97, § 10.

P. S. 136, § 15.

127 Mass. 268.

Provision for
creditor whose
right of action
accrues after
the two years.

1 SECTION 16. If the action is brought on such bond, the plaintiff
2 shall set forth his original cause of action against the deceased, in
3 like manner as would be required in a declaration for the same
4 demand against the executor or administrator, and may allege the
5 non-payment of the claim as a breach of the condition of the bond;
6 and the defendant may answer any matter of defence which would
7 be available in law against the claim if prosecuted in the usual
8 manner against the executor or administrator.

Same subject.
R. S. 66, § 8.
G. S. 97, § 11.
P. S. 136, § 16.

1 SECTION 17. If an executor or administrator dies, resigns or
2 is removed, without having fully administered the estate of the
3 deceased, and a new administrator is appointed, such new adminis-
4 trator shall be liable to the action of a creditor for two years after
5 he has given bond for the performance of his trust, unless such
6 action had been barred prior to the termination of the previous ad-
7 ministration; but after the expiration of said two years, he shall,
8 if he has given due notice of his appointment, have the benefit of
9 the limitations provided for original administration.

Limitation of
actions against
administrator
de bonis non.
R. S. 66, §§ 20-
23.
1852, 294, § 2.
G. S. 97, §§ 12,
13.
P. S. 136, § 17.
145 Mass. 489.

1 SECTION 18. If new assets come to the hands of such new
2 administrator after the time before limited for the commencement
3 of actions against him, he shall account for such new assets, and
4 shall be liable on account thereof to an action at law and to pro-
5 ceedings in the probate court by or in behalf of a creditor, in like
6 manner as is provided in this chapter relative to an original executor
7 or administrator.

Liability upon
receipt of new
assets.
R. S. 66, § 24.
G. S. 97, § 14.
P. S. 136, § 18.

PAYMENT OF LEGACIES AND DISTRIBUTIVE SHARES.

1 SECTION 19. A legatee may recover his legacy in an action at
2 law; and the provisions of this chapter shall not bar an action
3 brought at any time against an executor or administrator with the
4 will annexed for the recovery of a legacy.

11 Pick. 503.

6 Allen, 500.

112 Mass. 110.

P. S. 136, § 19.

13 Pick. 393.

7 Allen, 64.

121 Mass. 249.

140 Mass. 502.

5 Gray, 67.

106 Mass. 586.

136 Mass. 142.

156 Mass. 313.

163 Mass. 381.

Action by
legatee at any
time.
1693, 8, § 2.
1703-4, 12, § 5.
1783, 24, § 17.
1788, 66, § 5.
R. S. 66, § 16.
G. S. 97, § 22.

1 SECTION 20. If an executor or administrator, within two years
2 after having given bond for the performance of his trust, is required
3 by a legatee or next of kin to make payment, in whole or in part,
4 of a legacy or distributive share, the probate court may require
5 that such legatee or next of kin shall first give bond to the exec-
6 utor or administrator, with surety or sureties to be approved by
7 the court, and conditioned to repay the amount so to be paid or
8 so much thereof as may be necessary to satisfy any demands which
9 may be thereafter recovered against the estate of the deceased, and

Indemnity for
payment of
legacy, etc., if
required within
two years.
1817, 190, § 22.
R. S. 66, § 15.
G. S. 97, § 21.
P. S. 136, § 20.
144 Mass. 138.
151 Mass. 595.

to indemnify the executor or administrator against all loss and damage on account of such payment.

Partial distribution at any time.
1873, 224, § 2.
P. S. 136, § 21.
151 Mass. 595.
152 Mass. 74.
153 Mass. 233.

SECTION 21. If the probate court finds that a partial distribution of the personal property of an estate in process of settlement therein can, without detriment to such estate, be made to the persons entitled thereto, the court may, subject to the rights of creditors and after notice, order such partial distribution to be made.

Payment of legacy.
1855, 134.

SECTION 22. If by the provisions of a will a legacy is to be distributed in whole or in part among the heirs or next of kin of any person, or among persons of a certain class, the probate court, upon the application of any person interested, after notice, may order distribution to be made among such persons as according to the will seem to be entitled to the legacy.

Set-off of debts due from legatees, etc.
1879, 225, §§ 1, 2, 4.
P. S. 136, §§ 22, 23.
114 Mass. 24.
136 Mass. 138.
169 Mass. 430.

SECTION 23. A debt due to the estate of a deceased person from a legatee or distributee of such estate shall be set off against and deducted from the legacy to such legatee or from the distributive share of such distributee; and the probate court shall hear and determine the validity and amount of any such debt, and may make all necessary or proper decrees and orders to effect such set-off or deduction; but the provisions of this section shall not prejudice any remedy of an executor or administrator for the recovery of such debt nor affect the liability of the legatee or distributee for the excess of his indebtedness over the amount of his share in or claim upon the estate to which he is indebted.

Annuities, etc., payable from death of testator.
1848, 310, § 1.
G. S. 97, § 23.
P. S. 136, § 24.
102 Mass. 55.
103 Mass. 297, 345.
121 Mass. 178.
128 Mass. 575.

SECTION 24. If an annuity, or the use, rent, income or interest of property, real or personal, is given by will, deed or other instrument to or in trust for the benefit of a person for life or until the happening of a contingency, such person shall be entitled to receive and enjoy the same from and after the decease of the testator, unless it is otherwise provided in such will or instrument.

131 Mass. 20. 137 Mass. 21. 138 Mass. 303. 163 Mass. 510.

—apportionment of, etc.
1848, 310, § 2.
G. S. 97, § 24.
P. S. 136, § 25.
9 Allen, 246.
98 Mass. 462.
103 Mass. 297.
121 Mass. 178, 220.
139 Mass. 449.

SECTION 25. A person entitled to such annuity, rent, interest or income, or his representative, shall have the same apportioned if his right or estate therein terminates between the days upon which it is payable, unless otherwise provided in said will or instrument; but no action shall be brought therefor until the expiration of the period for which the apportionment is made.

146 Mass. 424. 171 Mass. 42.

LIABILITY OF HEIRS, ETC., AFTER SETTLEMENT BY EXECUTOR, ETC.

Liability of heirs, etc., after settlement by executor, etc.
1788, 66, § 5.
R. S. 70, § 13.
G. S. 101, § 31.
P. S. 136, § 26.
13 Mass. 384.
17 Pick. 14.
20 Pick. 2.
6 Cush. 235.
8 Allen, 259.

SECTION 26. After the settlement of an estate by an executor or administrator, and after the expiration of the time limited for the commencement of actions against him by the creditors of the deceased, the heirs, next of kin, devisees and legatees of the deceased shall be liable in the manner provided in the following sections for all debts for which actions could not have been brought against the executor or administrator, and for which provision is not made in the preceding sections of this chapter.

118 Mass. 369. 128 Mass. 555. 144 Mass. 138. 158 Mass. 418.
127 Mass. 268. 137 Mass. 195. 146 Mass. 366. 171 Mass. 386.

1 SECTION 27. A creditor whose right of action accrues after the
 2 expiration of said time of limitation, and whose claim could not
 3 legally be presented to the probate court, or whose claim, if pre-
 4 sented, has not been allowed, may, by action commenced within one
 5 year next after the time when such right of action accrues, recover
 6 such claim against the heirs and next of kin of the deceased or
 7 against the devisees and legatees under his will, each of whom shall
 8 be liable to the creditor to an amount not exceeding the value of the
 9 real or personal property which he has received from the deceased.
 10 But if by the will of the deceased any part of his estate or any one
 11 or more of the devisees or legatees is made exclusively liable for the
 12 debt in exoneration of the residue of the estate or of other devisees or
 13 legatees, such provisions of the will shall be complied with, and the
 14 persons and estate so exempted shall be liable for only so much of
 15 the debt as cannot be recovered from those who are first chargeable
 16 therewith.

Mode of en-
 forcing such
 liability.
 1788, 66, § 5.
 R. S. 70, § 14.
 G. S. 101, § 32.
 P. S. 136, § 27.
 9 Mass. 335.
 20 Pick. 2.
 101 Mass. 506.
 128 Mass. 277.
 137 Mass. 145.
 146 Mass. 306.
 176 Mass. 140.

1 SECTION 28. If an heir, next of kin, devisee or legatee dies with-
 2 out having paid his just proportion of such debt, his executor or
 3 administrator shall be liable therefor, as for his own debt, to the
 4 extent to which he would have been liable if living.

Upon death of
 heir, etc., his
 executor, etc.,
 to be liable.
 1788, 66, § 5.
 R. S. 70, § 15.
 G. S. 101, § 33.

P. S. 136, § 28.

1 Met. 387.

1 SECTION 29. If, under the provisions of the two preceding sec-
 2 tions, more than one person is liable for the debt, the creditor may
 3 recover such debt by a suit in equity in the supreme judicial court
 4 or the superior court against all persons so liable or against such
 5 of them as are within reach of process. The court shall determine,
 6 by the verdict of a jury if either party requires it, what amount is
 7 due to the plaintiff, and shall decide how much each of the defend-
 8 ants is liable to pay toward the debt.

Suit in equity
 if more than
 one heir, etc.,
 is so liable.
 R. S. 70, § 16.
 G. S. 101, § 34.
 P. S. 136, § 29.
 22 Pick. 503.
 1 Met. 387.
 12 Met. 405.
 15 Gray, 506.
 16 Gray, 127.
 136 Mass. 504.

1 SECTION 30. Such suit shall not be dismissed or barred for not
 2 making all the persons who might have been so included defendants;
 3 but in any stage of the cause the court may, upon terms, award
 4 proper process to bring in other parties, and may allow amendments
 5 in order to charge them as defendants.

—not to be
 dismissed for
 want of proper
 defendants.
 R. S. 70, § 18.
 G. S. 101, § 36.
 P. S. 136, § 30.

1 SECTION 31. If an heir, devisee or other person who is liable
 2 for the debt is insolvent, unable to pay his proportion thereof or
 3 beyond reach of process, the others shall be liable to the creditor
 4 for the whole amount of his debt; but no one shall be compelled to
 5 pay more than the amount which he has received from the estate of
 6 the deceased.

When one heir,
 etc., is unable
 to pay, the
 others to be
 liable for
 whole amount.
 1783, 24, § 18.
 1788, 66.
 R. S. 70, § 17.
 G. S. 101, § 35.

P. S. 136, § 31.

1 SECTION 32. If, in consequence of insolvency or bankruptcy,
 2 absence or other cause, a person who is liable for such debt fails to
 3 pay his just proportion thereof to the creditor, he shall be liable
 4 to indemnify all who, by reason of such failure on his part, pay
 5 more than their just proportion of the same. Such indemnity may
 6 be recovered, at their election, by all of them jointly, or in separate
 7 actions by one or more of them for his or their parts respectively.

If one heir,
 etc., fails to
 pay his just
 proportion, he
 shall be liable
 to the others.
 R. S. 70, § 19.
 G. S. 101, § 37.
 P. S. 136, § 32.
 10 Mass. 450.

CHAPTER 142.

OF INSOLVENT ESTATES OF DECEASED PERSONS.

- SECTION 1. — Order of Payment of Debts.
 SECTIONS 2-10. — Proof of Claims.
 SECTIONS 11-17. — Appeals.
 SECTIONS 18-26. — Payment of Dividends to Creditors.
 SECTIONS 27-29. — Contingent Claims.
 SECTIONS 30-32. — Actions by Creditors during Pendency of
 Insolvency Proceedings.

ORDER OF PAYMENT OF DEBTS.

Order of pay-
 ment of debts.
 C. L. 250, § 4.
 1692-3, 16, § 1.
 1696, 8, § 1.
 1784, 2.
 R. S. 68, § 1.
 G. S. 99, § 1.
 1881, 159.
 P. S. 137, § 1.
 1884, 293.
 U. S. Rev. Sts.,
 § 3466.
 6 Pick. 481.
 16 Pick. 255.
 4 Met. 325.
 15 Gray, 471.
 4 Allen, 141.
 127 Mass. 242.
 137 Mass. 412.
 139 Mass. 364.
 143 Mass. 326.

SECTION 1. If the estate of a person deceased is insufficient to pay all his debts, it shall, after discharging the necessary expenses of his funeral and last sickness and the charges of administration, be applied to the payment of his debts, which shall include equitable liabilities, in the following order:—

First, Debts entitled to a preference under the laws of the United States.

Second, Public rates, taxes and excise duties.

Third, Wages or compensation, to an amount not exceeding one hundred dollars, due to a clerk, servant or operative for labor performed within one year last preceeding the death of such deceased person or for such labor so performed for the recovery of payment for which a judgment has been rendered.

Fourth, Debts due to all other persons.

If there is not enough to pay all the debts of any class, the creditors of that class shall be paid ratably upon their respective debts; and no payment shall be made to creditors of any class until all those of the preceding class or classes, of whose claims the executor or administrator has notice, have been fully paid.

PROOF OF CLAIMS.

Commissioners
 to examine
 claims of
 creditors.
 C. L. 250, § 4.
 1692-3, 16, § 1.
 1696, 8, § 1.
 1784, 2.
 R. S. 68, § 2.
 G. S. 99, § 2.
 P. S. 137, § 2.

SECTION 2. If the probate court finds from the representation of an executor or administrator that the estate of the deceased will probably be insufficient for the payment of his debts, it may appoint two or more commissioners to receive and examine all claims of creditors against such estate, and to return a list of all claims presented to them, with the amount allowed on each claim.

2 Mass. 498.
 120 Mass. 516.

127 Mass. 242.
 139 Mass. 360.

140 Mass. 596.
 143 Mass. 326.

149 Mass. 520.

—duties of.
 C. L. 250, § 4.
 1692-3, 16, § 1.
 1696, 8, § 1.
 1752-3, 12, § 3.
 1784, 2.
 R. S. 68, §§ 2-4.
 1854, 92.
 G. S. 99, §§ 2-4.
 P. S. 137, § 3.
 139 Mass. 360.

SECTION 3. The commissioners shall be sworn before entering upon the performance of their official duties; they shall appoint convenient times and places for their meetings to receive and examine claims; and shall by mail or otherwise give to all known creditors at least seven days' written notice of the time and place of each meeting, and also such other notice thereof as the court shall order; and the executor or administrator shall, fourteen days at least before the first meeting, furnish to the commissioners the names and residences of all known creditors. At the expiration of

10 the time allowed for the proof of claims, the commissioners shall
11 make their return to the court.

1 SECTION 4. If the court does not appoint commissioners accord-
2 ing to the provisions of section two, it shall itself receive and ex-
3 amine the claims of creditors, allow such as should legally be
4 allowed and cause a list of all claims presented for proof, with the
5 amount allowed or disallowed on each claim, to be made and cer-
6 tified by the register of said court.

Court to ex-
amine claims,
when.
1873, 252, §§ 1, 4.
P. S. 137, § 4.
141 Mass. 509.

1 SECTION 5. The court shall in such cases order the executor
2 or administrator to give to creditors notice of the times when and
3 places where their claims will be examined, in the same manner as
4 is required of commissioners by the provisions of section three.

Notice to
creditors.
1873, 252, § 2.
P. S. 137, § 5.

1 SECTION 6. If a commissioner appointed under the provisions
2 of section two dies or resigns before his duties are fully performed,
3 or, if for unreasonable neglect to make the return required by
4 law or for any other cause he is removed, the probate court may fill
5 the vacancy.

Appointment
of new com-
missioner. .
1843, 217, § 2.
1868, 327, § 1.
P. S. 137, § 6.
162 Mass. 450.

1 SECTION 7. The commissioners or the court may require a
2 claimant to make true answers under oath to all questions relative
3 to his claim; and if he refuses to take such oath or to answer fully
4 all questions, his claim may be disallowed. Any one of the commis-
5 sioners may administer the oath to claimants and witnesses.

Claimants to
answer under
oath.
1789, 50.
R. S. 68, §§ 15,
16.
G. S. 99, §§ 15,
16.
P. S. 137, §§ 7, 8.

1 SECTION 8. The probate court may, except while an appeal
2 under the provisions of section eleven is pending, upon the applica-
3 tion of the executor or administrator, examine upon oath any person
4 whose claim has been allowed as aforesaid unless such allowance
5 has been made by the supreme judicial court or the superior court
6 on appeal, may summon any person to give evidence relative to
7 such claim and, upon notice, alter or expunge a claim which it finds
8 is founded wholly or partially in fraud, illegality or mistake.

Examination
by probate
court.
1899, 81.

1 SECTION 9. Six months after the appointment of the commis-
2 sioners or after the order of the court under the provisions of sec-
3 tion five shall be allowed for the creditors to present and prove
4 their claims: and if a new commissioner is appointed under the
5 provisions of section six, the time shall be extended until the ex-
6 piration of six months from his appointment. The court may
7 allow further time, not exceeding eighteen months from the original
8 appointment or order; and, upon an appeal as hereinafter provided,
9 it may extend the time to a date not more than one month after
10 the final decision of such appeal.

Limit of time
for proof of
claims.
C. L. 250, § 4.
1692-3, 16, § 1.
1696, 8, § 1.
1784, 2.
R. S. 68, § 4.
G. S. 99, § 4.
1843, 217, § 1.
1868, 327, § 1.
1873, 252, § 4.
P. S. 137, § 9.
6 Pick. 458.
16 Pick. 255.
4 Met. 317.
104 Mass. 277.
116 Mass. 447.

1 SECTION 10. A creditor who does not present his claim for
2 allowance in the manner herein provided shall be barred from
3 recovering the same; but if further assets of the deceased come to
4 the hands of the executor or administrator after the decree of distri-
5 bution, the claim may be proved, allowed and paid as provided in
6 this chapter for contingent claims.

Claims not
proved to be
barred, unless,
etc.
C. L. 250, § 4.
1692-3, 16, § 1.
1696, 8, § 1.
1784, 2.
R. S. 68, § 20.
G. S. 99, § 21.

APPEALS.

Appeal from
decision of
commission-
ers.

1696, 8, § 1.
1784, 2.
R. S. 68, § 8.
G. S. 99, § 8.
1865, 258.
1873, 252, § 4.
P. S. 137, § 11.
1884, 293.
8 Met. 132.
116 Mass. 125.
127 Mass. 242.
143 Mass. 326.

SECTION 11. A person whose claim is disallowed in whole or in part, and an executor, administrator, heir, legatee, devisee or creditor who is dissatisfied with the allowance of a claim, may appeal from the decision of the commissioners or of the court, and the claim shall thereupon be determined at common law in the county in which the probate or administration was granted. If the demand exceeds four thousand dollars in the county of Suffolk, or one thousand dollars in any other county, the appeal shall be either to the supreme judicial court, or the superior court; otherwise, to the superior court, and it shall be tried and determined in like manner as if an action had been brought therefor by the supposed creditor against the executor or administrator.

—time for
claiming.

1784, 2.
R. S. 68, § 9.
G. S. 99, § 9.
1873, 252, § 3.
P. S. 137, § 12.
1885, 384, § 5.
110 Mass. 229.

SECTION 12. Such appeal shall be claimed and notice thereof given at the registry of probate within thirty days after the return of the commissioners; or, when the court receives and examines the claims, within thirty days after the allowance or rejection of the claim. If the appeal is by an executor or administrator, he shall give notice thereof to the creditor within said thirty days. The appeal shall be entered on the first Monday of the calendar month next succeeding the expiration of said thirty days.

—proceedings
on.

1784, 2.
R. S. 68, §§ 10,
15.
G. S. 99, §§ 10,
15.
1873, 252, § 4.
P. S. 137, § 13.
162 Mass. 450.

SECTION 13. Upon the entry of the appeal, the supposed creditor shall file a statement in writing of his claim, setting forth briefly and distinctly all the material facts which would be necessary in a declaration for the same cause of action; and like proceedings shall thereupon be had in the pleadings, trial, and determination of the cause as in an action at law; but no execution shall be awarded against the executor or administrator for a debt found due to the claimant. The appellate court shall have the same power as the probate court or the commissioners to examine the claimant. The final judgment shall be conclusive and the list of debts allowed shall be altered, if necessary, to conform thereto.

—waiver of,
and submis-
sion to arbitra-
tion.

1784, 2.
R. S. 68, § 11.
G. S. 99, § 11.
P. S. 137, § 14.
12 Cush. 220.

SECTION 14. After claiming such appeal, the parties may waive a trial at law and submit the claim to the determination of arbitrators agreed on by the parties and appointed by the probate court and thereupon the appeal shall not be entered. The award of such arbitrators, if accepted by the court, shall be as conclusive as a judgment in a court of common law.

—costs upon.

R. S. 68, § 12.
G. S. 99, § 12.
P. S. 137, § 15.

SECTION 15. The party who prevails upon such appeal shall be entitled to costs, which, if recovered against the executor or administrator, may be allowed to him in his administration account.

—after the
time limit,
may be heard,
how.

1816, 62.
R. S. 68, § 13.
G. S. 99, § 13.
P. S. 137, § 16.
7 Met. 211.
121 Mass. 565.

SECTION 16. If a person whose claim has been disallowed by the commissioners or by the probate court omits, for cause other than his own neglect, to claim or prosecute his appeal as before provided, the supreme judicial court in any county, may, upon his petition filed within two years after the return of the commissioners and within four years after the date of the administration bond, allow him upon terms to enter and prosecute his appeal.

1 SECTION 17. The allowance of such appeal and the judgment
 2 thereon shall not affect any distribution ordered before notice of
 3 the petition or of the intention to present the same has been given
 4 in writing at the registry of probate or to the executor or adminis-
 5 trator; but any debt thus proved and allowed shall be paid only out
 6 of such assets as remain in or come to the hands of the executor or
 7 administrator after payment of the amounts payable on such prior
 8 decree of distribution.

Effect of allow-
 ance of appeal.
 1816, 62.
 R. S. 68, § 14.
 G. S. 99, § 14.
 P. S. 137, § 17.

PAYMENT OF DIVIDENDS TO CREDITORS.

1 SECTION 18. After the expiration of the time allowed by the
 2 provisions of section twelve for claiming appeals from the allow-
 3 ance or disallowance of a claim, the probate court shall make a
 4 decree for the distribution of the estate among the creditors accord-
 5 ing to the provisions of this chapter. If, before making the decree,
 6 the court has notice of an appeal then claimed or pending, the
 7 decree may be suspended until the determination of the appeal, or
 8 a distribution may be ordered among the creditors whose debts are
 9 allowed, leaving in the hands of the executor or administrator an
 10 amount sufficient to pay to the claimant whose demand is disputed
 11 a proportion equal to that of the other creditors.

Distribution of
 assets among
 creditors
 whose claims
 are proved.
 1784, 2.
 R. S. 68, § 17.
 G. S. 99, § 17.
 P. S. 137, § 18.
 7 Cush. 353.

1 SECTION 19. The court may, at any time before the expiration
 2 of the time allowed for claiming appeals, in its discretion order
 3 dividends to be paid to creditors whose claims have been proved
 4 and allowed, if there is left in the hands of the executor or admin-
 5 istrator an amount sufficient to pay upon claims that may probably
 6 be proved afterward a proportion equal to what is so paid to such
 7 creditors. Such amount shall remain unappropriated in the hands
 8 of the executor or administrator until the final dividend is declared,
 9 or until a distribution is ordered.

Same subject.
 1868, 327, § 2.
 P. S. 137, § 19.

1 SECTION 20. If the whole assets are not distributed upon the
 2 first decree, or if further assets come to the hands of the executor or
 3 administrator, the court shall make further decrees for distribution.

Same subject.
 R. S. 68, § 18.
 G. S. 99, § 19.
 P. S. 137, § 20.

1 SECTION 21. If the deceased had been a member of a partner-
 2 ship, and partnership and individual claims are proved against his
 3 estate, separate lists of said claims shall be made, and in making
 4 dividends the court shall order the joint and the separate estate to
 5 be distributed in the same manner and among the same classes of
 6 creditors as is provided in the case of insolvent debtors under the
 7 provisions of chapter one hundred and sixty-three.

Provision for
 case of
 deceased co-
 partner.
 G. S. 99, § 18.
 P. S. 137, § 21.
 10 Met. 305.
 5 Allen, 150.
 127 Mass. 111.

1 SECTION 22. If, after the completion of the list of allowed claims,
 2 the assets prove sufficient to pay all such claims, the executor or
 3 administrator shall pay them in full; and if any other debt is after-
 4 ward recovered against him, he shall be liable therefor only to the
 5 extent of the assets then remaining. If there are two or more such
 6 creditors, the assets, if insufficient to pay their demands in full,
 7 shall be divided among them in proportion to their debts.

Proceedings
 if assets are
 sufficient to
 pay all claims
 allowed.
 1833, 189.
 R. S. 68, §§ 21,
 22.
 G. S. 99, §§ 22,
 23.
 P. S. 137, §§ 22,
 23.

Proceedings
if assets are
sufficient to
pay all claims
allowed.
1833, 189.
R. S. 68, § 23.
G. S. 99, § 24.
P. S. 137, § 24.

SECTION 23. The executor or administrator, in an action brought against him on such demand, may prove the amount of assets in his hands, and thereupon judgment shall be rendered in the usual form; but execution shall not issue for more than the amount of such assets; and if there are two or more judgments, the court shall apportion the amount between them.

Disposition of
unclaimed
dividends.
1844, 115, § 1.
G. S. 99, § 27.
P. S. 137, § 25.

SECTION 24. After twenty years from the decree of distribution of an insolvent estate, the probate court, upon application by a creditor whose claim was proved and allowed, and after notice of such application published in one or more newspapers of the county for not less than two years on such days as the court shall direct, may order any unclaimed dividends, with the interest received thereon, after deducting all expenses and charges of administration since the decree of distribution, to be distributed anew among the creditors who have received their dividends. If there is a surplus after satisfying the claims of such creditors with interest, it shall be distributed to the persons legally entitled thereto.

Same subject.
1844, 115, § 2.
G. S. 99, § 28.
P. S. 137, § 26.

SECTION 25. If a creditor who has failed to receive his dividend as aforesaid has deceased, the probate court for the county in which administration on his estate might have been granted shall, at any time before a decree to distribute the unclaimed dividends is passed, grant administration upon his estate, although more than twenty years may have elapsed since his death, and the administrator may receive and administer such dividend.

Removal of
executor, etc.,
neglecting to
account.
1794, 5.
R. S. 68, § 25.
G. S. 99, § 26.
P. S. 137, § 27.
3 Met. 109.
129 Mass. 226.

SECTION 26. If an executor or administrator neglects to render and settle his accounts in the probate court within six months after the final determination of the claims of creditors of an insolvent estate, or within such further time as the court may allow, and thereby delays a decree of distribution, such neglect shall be unfaithful administration and he may be removed.

CONTINGENT CLAIMS.

Contingent
claims not
payable.
1821, 72.
R. S. 68, § 5.
G. S. 99, § 5.
P. S. 137, § 28.
7 Met. 132.
16 Gray, 512.
7 Allen, 439.
123 Mass. 489.

SECTION 27. If, at the expiration of the time allowed for the proof of claims, a person is liable as a surety for the deceased, or has a contingent claim against his estate which could not be proved as a debt within said time, the court upon proof of such facts shall, in ordering a dividend, leave in the hands of the executor or administrator an amount sufficient to pay to such contingent creditor a proportion equal to what is then to be paid to the other creditors.

Same subject.
1821, 72.
R. S. 68, § 6.
G. S. 99, § 6.
P. S. 137, § 29.

SECTION 28. If such contingent debt becomes absolute within four years after the time of the giving of the executor's or administrator's bond, it may be proved before the probate court, before the commissioners already appointed, or before others to be appointed for the purpose by the court.

Same subject.
1821, 72.
R. S. 68, § 7.
G. S. 99, § 7.
P. S. 137, § 30.

SECTION 29. Upon the allowance of such claim the creditor shall be entitled to a dividend thereon equal to what has been paid to the other creditors, so far as the same can be paid without disturbing the former dividend; and if the claim is not finally established, or if

5 the dividend upon it does not exhaust the assets in the hands of the
6 executor or administrator, the residue of the assets shall be divided
7 among all creditors who have proved their debts. If there is a
8 surplus after satisfying the claims of such creditors, with interest,
9 it shall be distributed to the persons legally entitled thereto.

ACTIONS BY CREDITORS DURING PENDENCY OF INSOLVENCY PRO-
CEEDINGS.

1 SECTION 30. Except as provided in the following section, no
2 action shall be maintained against an executor or administrator after
3 an estate has been represented insolvent, unless for a claim entitled
4 to a preference which would not be affected by the insolvency of
5 the estate or unless the assets prove more than sufficient to pay all
6 the debts allowed by the commissioners. If the estate is repre-
7 sented insolvent while an action is pending for a claim which is
8 not entitled to such preference, the action may be discontinued
9 without costs; or, if it is disputed, the action may be tried and
10 determined and judgment rendered thereon in the same manner and
11 with the same effect as is provided in the case of an appeal from the
12 allowance or disallowance of the claim of a creditor; or the action
13 may be continued without costs until it appears whether the estate
14 is insolvent, and, if it is not insolvent, the plaintiff may prosecute
15 the action as if no such representation had been made.

Actions
against an
executor, etc.,
after represen-
tation of in-
solvency.
1696, 8, § 1.
1784, 2.
R. S. 68, § 19.
G. S. 99, § 20.
P. S. 137, § 31.
1 Mass. 502.
4 Mass. 620.
116 Mass. 447.
136 Mass. 294.
142 Mass. 227.
149 Mass. 185.

1 SECTION 31. If it is not ascertained at the end of eighteen
2 months after the granting of letters testamentary or of administra-
3 tion whether an estate represented insolvent is or is not so in fact,
4 any creditor whose claim has not been presented for proof may com-
5 mence an action therefor against the executor or administrator, and
6 such action may be continued without costs for the defendant until
7 it appears whether the estate is insolvent; and if it is not insolvent,
8 the plaintiff may prosecute the action as if no such representation
9 had been made.

—to be com-
menced, when.
1833, 189.
R. S. 68, § 24.
G. S. 99, § 25.
P. S. 137, § 32.
116 Mass. 447.

1 SECTION 32. If judgment has been rendered against the estate
2 of a deceased person which has been represented insolvent, and a
3 certified copy from the probate court, showing such representation,
4 has been filed in the clerk's office of the court in which the judgment
5 was rendered, no execution shall be issued on such judgment; but
6 such judgment may be presented for allowance in the same manner
7 as other claims of creditors, and otherwise the proceedings relative
8 to such judgment shall be the same as those relative to judgments
9 rendered on appeal under the provisions of section thirteen.

Proceedings
when judg-
ment has been
rendered
against an in-
solvent estate.
1880, 233.
P. S. 137, § 33.
136 Mass. 294.

CHAPTER 143.

OF THE SETTLEMENT OF THE ESTATES OF DECEASED NON-RESIDENTS.

1 SECTION 1. If administration is taken in this commonwealth
2 on the estate of a person who was an inhabitant of any other state
3 or country, his estate found here shall, after payment of his debts,

Administra-
tion of estates
of deceased
non-residents.
R. S. 70, § 21.

1843, 92.
G. S. 101, § 38.
P. S. 138, § 1.
9 Mass. 337.
11 Mass. 256.
6 Pick. 481.
3 Met. 109.
147 Mass. 204.
165 Mass. 240.

be disposed of according to his last will, if he left any duly executed according to law; otherwise his real property shall descend according to the laws of this commonwealth, and his personal property shall be distributed and disposed of according to the laws of the state or country of which he was an inhabitant.

Administration of estates of deceased non-residents.
R. S. 70, § 22.
G. S. 101, § 39.
P. S. 138, § 2.
151 Mass. 601.
152 Mass. 74.

SECTION 2. After the payment of all debts for which such estate is liable in this commonwealth, the residue of the personal property may be distributed and disposed of, as provided in the preceding section, by the probate court; or, in the discretion of the court, it may be transmitted to the executor or administrator, if any, in the state or country of which the deceased was an inhabitant, to be there disposed of according to the laws thereof.

Settlement of such estate when insolvent.
R. S. 70, § 23.
G. S. 101, § 40.
P. S. 138, § 3.

SECTION 3. If such person dies insolvent, his estate found in this commonwealth shall, as far as practicable, be so disposed of that all his creditors here and elsewhere may each receive an equal proportion of their respective debts. 3 Pick. 128. 8 Pick. 475.

Same subject.
R. S. 70, §§ 24, 25.
G. S. 101, § 41.
P. S. 138, § 4.

SECTION 4. The estate shall not be transmitted to the foreign executor or administrator until all the creditors who are citizens of this commonwealth have received the proportion which would be due to them if the whole estate of the deceased, wherever found, which is applicable to the payment of common creditors were divided without preference among all the creditors in proportion to their respective debts; and no creditor who is not a citizen of this commonwealth shall be paid out of the assets found here, until all those who are such citizens have received the proportion provided in the preceding section.

Same subject.
R. S. 70, § 26.
G. S. 101, § 42.
P. S. 138, § 5.

SECTION 5. If there is a residue after such payment to the citizens of this commonwealth, it may be paid to any other creditors who have duly proved their debts here, in proportion to the amount due to each of them, but no one shall receive more than would be due to him if the whole estate were divided ratably among all the creditors as before provided. The balance may be transmitted to the foreign executor or administrator; or if there is none, it shall, after the expiration of four years from the appointment of the administrator, be distributed ratably among all creditors, both citizens and others, who have proved their debts in this commonwealth.

CHAPTER 144.

OF THE SETTLEMENT OF ESTATES OF ABSENTEES.

Petition for appointment of receiver.
1894, 203.
1897, 447, § 1.

SECTION 1. If a resident of the commonwealth having property therein has disappeared, absconded or is absent therefrom and has left no agent therein and his whereabouts are unknown; or if such resident, who has a wife or minor child dependent upon him wholly or partly for support, has disappeared without making sufficient provision for such support and his whereabouts are unknown, or if

7 it is known that they are without the commonwealth, a person who
8 would be entitled to administer upon his estate if he were dead, or
9 such wife, or a person in behalf of such wife or minor child, may
10 file a petition, under oath, in the probate court for the county in
11 which any such property is located or found, stating the name, age,
12 occupation and last known residence or address of such absentee,
13 the date and circumstances of his disappearance, and the names
14 and residence of the family of such absentee and of other persons
15 of whom inquiry may be made and containing a schedule of his
16 property, real and personal, so far as known, and its location within
17 the commonwealth, and praying that such property may be taken
18 possession of and a receiver thereof appointed under the provisions
19 of this chapter.

1 SECTION 2. The court may thereupon issue a warrant directed
2 to the sheriff or his deputy, which may run into and be served in
3 any county, commanding him to take possession of the property,
4 named in said schedule and hold the same subject to the order of
5 the court and make return of said warrant as soon as may be with his
6 doings thereon with a schedule of the property taken possession of
7 by virtue thereof. The officer shall post a copy of the warrant
8 upon each parcel of land named in the schedule and cause so much
9 of the warrant as relates to land to be recorded in the registry of
10 deeds for the county and district in which the land is located. He
11 shall receive such fees for serving the warrant as the court allows
12 but not more than those established by law for similar service upon
13 a writ of attachment. If the petition is dismissed, said fees and
14 the cost of publishing and serving the notice hereinafter provided
15 shall be paid by the petitioner. If a receiver is appointed said fees
16 and cost shall be paid by the receiver and allowed in his account.

Warrant.
1897, 447, § 1.

1 SECTION 3. Upon the return of such warrant, the court may
2 issue a notice which shall recite the substance of the petition, war-
3 rant and officer's return and shall be addressed to such absentee and
4 to all persons who claim an interest in said property, and to all
5 whom it may concern, citing them to appear at a time and place
6 named and show cause why a receiver of the property named in the
7 officer's schedule should not be appointed and said property held
8 and disposed of under the provisions of this chapter.

Notice.
1897, 447, § 1.

1 SECTION 4. The return day of said notice shall be not less than
2 thirty nor more than sixty days after its date. The court shall
3 cause said notice to be published in one or more newspapers within
4 the commonwealth, once in each of three successive weeks and to
5 be posted in two or more conspicuous places in the city or town in
6 which the absentee last resided or was known to have been either
7 temporarily or permanently and upon each parcel of land named in
8 the officer's schedule, and a copy to be mailed to the last known
9 address of such absentee. The court may order other and further
10 notice to be given within or without the commonwealth. The
11 certificate of the register of the court that he has served the notice
12 as directed by the court shall be filed before the return day and
13 shall be conclusive proof of such service.

Same subject.
1897, 447, § 1.

Appointment
of receiver.
Bond.
1897, 447, §§ 1, 2.

SECTION 5. The absentee and any person who claims an interest 1
in any of the property may appear and show cause why the prayer 2
of the petition should not be granted. The court may after hearing 3
dismiss the petition and order the property in possession of the 4
officer to be returned to the person entitled thereto, or it may 5
appoint a receiver of the property which is in the possession of the 6
officer and named in his schedule. If a receiver is appointed the 7
court shall find and record the date of the disappearance or abscond- 8
ing of the absentee; and such receiver shall give bond to the judge 9
of probate and his successors in office in such sum and with such 10
condition as the court orders, with a company named in section 11
sixty-one of chapter one hundred and eighteen and approved by 12
the court as surety thereon. 13

Transfer of
property, etc.

SECTION 6. After the filing and approval of such bond the 1
court may order the sheriff or his deputy to transfer and deliver to 2
such receiver the possession of the property under the aforesaid 3
warrant, and the receiver shall file in the registry of probate a 4
schedule of the property received by him. 5

Possession of
additional
property.
Debts.

SECTION 7. Such receiver upon petition filed by him may be 1
authorized and directed to take possession of any additional prop- 2
erty within the commonwealth which belongs to such absentee and 3
to demand and collect all debts due such absentee from any person 4
within the commonwealth, and hold the same as if it had been 5
transferred and delivered to him by the officer. 6

Management
and sale of
property.
1897, 447, § 3.

SECTION 8. The court may make orders for the care, custody, 1
leasing and investing of said property and its proceeds. If any of 2
said property consists of live animals or is perishable or cannot be 3
kept without great or disproportionate expense, the court may, at 4
any time after the return of the warrant, order such property to be 5
sold at public or private sale. After the appointment of a receiver, 6
upon his petition and after notice, the court may order all or part of 7
said property, including the rights of the absentee in land, to be 8
sold at public or private sale to supply money for payments author- 9
ized by this chapter or for re-investment approved by the court. 10

Allowance to
widow and
children.
1897, 447, § 3.

SECTION 9. The court may order said property or its proceeds 1
acquired by mortgage, lease or sale to be applied in payment of 2
charges incurred or that may be incurred in the support and main- 3
tenance of the absentee's wife and minor children, and to the dis- 4
charge of such debts as may be proved against said absentee. 5

Compensation
of receiver;
accounts;
barring of
suits.
1897, 447, § 6.

SECTION 10. The receiver shall be allowed such compensation 1
and such disbursements as the court orders to be paid out of said 2
property or its proceeds. If such absentee appears within fourteen 3
years after the date of the disappearance and absconding as found 4
and recorded by the court, the receiver shall account to him for, 5
deliver and pay over the unexpended balance of said property. 6
If, within said fourteen years, an administrator, executor, assignee 7
in insolvency or trustee in bankruptcy of said absentee is appointed, 8
such receiver shall account for, deliver and pay over to him the 9
unexpended balance of said property. If said absentee does not 10

11 appear and claim said property within said fourteen years, all
 12 the right, title and interest of said absentee in said property, real
 13 or personal, or the proceeds thereof shall be barred and no action,
 14 suit or petition in any form shall be commenced by said absentee
 15 after the expiration of said fourteen years for or on account of said
 16 property or its proceeds.

1 SECTION 11. If, at the expiration of said fourteen years, said
 2 property has not been accounted for, delivered or paid over under
 3 the provisions of the preceding section, the court shall order the
 4 distribution of the unexpended balance thereof to the persons to
 5 whom, and in the shares and proportions in which, it would have
 6 been distributed if said absentee had died intestate on the day four-
 7 teen years after the date of the disappearance or absconding as
 8 found and recorded by the court.

Distribution of
 property.
 1897, 447, §§ 4, 5.

1 SECTION 12. If such receiver is not appointed within thirteen
 2 years after the date found by the court under the provisions of
 3 section five, the time limited for accounting for, or fixed for dis-
 4 tributing, said property or its proceeds, or for barring actions
 5 relative thereto, shall be one year after the date of the appointment
 6 of the receiver instead of the fourteen years provided in the two
 7 preceding sections.

Limitation if
 receiver is not
 appointed
 within thirteen
 years.

CHAPTER 145.

OF GUARDIANSHIP.

- SECTION 1. — Jurisdiction.
 SECTIONS 2-5. — Of Minors.
 SECTIONS 6-11. — Of Insane Persons and Spendthrifts.
 SECTIONS 12-15. — Of Married Women.
 SECTIONS 16-19. — Of Persons out of the Commonwealth.
 SECTIONS 20, 21. — Temporary Guardians.
 SECTION 22. — Removals, Resignations, etc.
 SECTIONS 23, 24. — Guardians ad Litem and Next Friend.
 SECTIONS 25-39. — General Powers and Duties of Guardians.
 SECTIONS 40, 41. — Conservators of the Property of Aged Persons.
 SECTION 42. — Agents of Non-resident Guardians and Conservators.

JURISDICTION.

1 SECTION 1. The probate court may, if it appears necessary
 2 or convenient, appoint guardians of minors and others who are
 3 inhabitants of or residents in the county or who reside out of this
 4 commonwealth and have estate within the county.

Appointment
 of guardians.
 C. L. 1, § 2.
 1692-3, 46, § 2.
 1776-7, 20.
 1783, 38, § 1.
 1817, 190, § 1.

R. S. 79, § 1. G. S. 109, § 1. P. S. 139, § 1. 5 Pick. 370. 128 Mass. 587.

OF MINORS.

1 SECTION 2. If a minor is under the age of fourteen years, the
 2 probate court may nominate and appoint his guardian. If he is
 3 above that age, he may nominate his own guardian, who, if approved

Same subject.
 1752-3, 12, § 6.
 1783, 38, § 1.
 R. S. 79, § 2.
 G. S. 109, § 2.

P. S. 139, § 2.
154 Mass. 378.

by the court, shall be appointed accordingly. If the person nominated is not approved by the court, or if the minor resides out of the commonwealth, or, after being cited, neglects to nominate a suitable person, the court may nominate and appoint his guardian in the same manner as if he were under the age of fourteen years.

Appointment
of guardians.
1752-3, 12, § 7.
1783, 38, § 1.
R. S. 79, § 3.
1837, 171, § 2.
G. S. 109, § 3.

SECTION 3. The nomination of a guardian by a minor above the age of fourteen years may be made before a justice of the peace, special commissioner or a city or town clerk, who shall certify the fact to the probate court.

P. S. 139, § 3.

1899, 178, § 2.

Power of
guardian of
minor.
C. L. 211, § 4.
R. S. 79, § 4.
G. S. 109, § 4.
1871, 116.
1873, 367.
1880, 66.
P. S. 139, § 4.
149 Mass. 57.

SECTION 4. The guardian of a minor, unless sooner discharged according to law, shall continue in office until the minor arrives at the age of twenty-one years, and he shall have the custody and tuition of his ward and the care and management of all his estate, except that the father of the minor, if living, and in case of his death, the mother, they being, respectively, competent to transact their own business, shall be entitled to the custody of the person of the minor and to the care of his education; but the probate court may order that the guardian shall have such custody, if, upon a hearing and after such notice to the parents or surviving parent as it may order, it finds such parents or parent to be unfit to have such custody, or if it finds one of them unfit therefor, and the other files in such court his or her consent in writing to such order.

Appointment
of testamen-
tary guardian.
R. S. 79, § 6.
G. S. 109, § 5.
1877, 128.
P. S. 139, § 5.
1898, 138.
8 Met. 127.
9 Allen, 518.

SECTION 5. A father, or, if he has died without exercising the power, a mother may by his or her last will in writing appoint, subject to the approval of the probate court, a guardian for his or her child, whether born at the time of making the will or afterward, to continue during the minority of the child or for a less time. Such testamentary guardian shall have the same powers and perform the same duties, relative to the person and estate of the ward, as a guardian appointed by the probate court.

OF INSANE PERSONS AND SPENDTHRIFTS.

— of guardian
of insane per-
son.
1603-4, 18.
1724-7, 12, § 1.
1731-2, 14, § 1.
1737-8, 9, § 1.
1783, 38, § 2.
R. S. 79, § 9.
G. S. 109, § 8.
P. S. 139, § 7.
8 Mass. 129.
12 Mass. 505.
5 Pick. 490.

SECTION 6. If the relations or friends of an insane person, or the mayor and aldermen or selectmen of a city or town of which an insane person is an inhabitant or resident, apply to the probate court to have a guardian appointed for him, the court shall cause not less than fourteen days' notice of the time and place appointed for the hearing to be given to him; and if after a hearing the court finds that he is incapable of taking care of himself, it shall appoint a guardian of his person and estate.

7 Met. 388.

4 Gray, 63.

102 Mass. 14.

154 Mass. 378.

— of guardian
of spend-
thrift.
1783, 38, § 7.
R. S. 79, §§ 11,
12.
1846, 249.
G. S. 109, § 9.
P. S. 139, § 8.
1897, 173.
12 Pick. 152.
106 Mass. 501.

SECTION 7. If a person, by excessive drinking, gaming, idleness, or debauchery of any kind, so spends, wastes or lessens his estate as to expose himself or his family to want or suffering, or any city or town to charge or expense for his support or for the support of his family, the overseers of the poor of the city or town of which he is an inhabitant or resident, or upon which he is or may become chargeable, or a relation or relations of such spendthrift, may file a petition in the probate court, stating the facts and cir-

9 circumstances of the case and praying to have a guardian appointed.
 10 In towns in which overseers of the poor are not chosen and in which
 11 selectmen act as such, the selectmen may file such petition. Upon
 12 the filing of such petition, the court shall cause not less than four-
 13 teen days' notice of the time and place appointed for the hearing
 14 to be given to the supposed spendthrift; and if, after a hearing, it
 15 finds that he comes within the above description, it shall appoint a
 16 guardian of his person and estate.

1 SECTION 8. Such petitioners may cause a copy of the petition,
 2 with the order of notice thereon, to be recorded in the registry of
 3 deeds for the county and district in which any land of the supposed
 4 spendthrift is located; and if a guardian is appointed upon such
 5 petition, all contracts, except for necessities or relative to land, and
 6 all gifts, sales or transfers of personal property made by the spend-
 7 thrift after an order of notice upon the petition has been issued by
 8 the probate court, and all contracts relative to and sales and con-
 9 veyances of land made by the spendthrift after such record in the
 10 registry of deeds for the county and district in which the land is
 11 located, and before the termination of the guardianship, shall be void.

Effect on con-
 tracts, etc., of
 recording com-
 plaint.
 1783, 38, § 7.
 1818, 60.
 1826, 63, § 1.
 R. S. 79, § 13.
 G. S. 109, § 10.
 P. S. 139, § 9.
 12 Cush. 324.
 37 Mass. 508.
 108 Mass. 46.
 130 Mass. 458.
 142 Mass. 505.
 151 Mass. 354.

1 SECTION 9. If a guardian is appointed for an insane person
 2 or spendthrift, the court shall make an allowance, to be paid by the
 3 guardian, for all reasonable expenses incurred by the ward in de-
 4 fending himself against the petition.

P. S. 139, § 10.

Allowance for
 defence of
 insane person.
 1826, 63, § 2.
 R. S. 79, § 14.
 G. S. 109, § 11.

1 SECTION 10. The guardian of an insane person or spendthrift
 2 shall have the care and custody of the person of his ward and the
 3 management of all his estate, and shall give the bond prescribed in
 4 section one of chapter one hundred and forty-nine, except that the
 5 conditions relative to the education of the ward shall be omitted.

P. S. 139, § 11.

5 Mass. 427.

162 Mass. 582.

Powers, etc.,
 of guardian of
 insane person
 or spendthrift.
 1783, 38, §§ 2,
 5, 7.
 R. S. 79, §§ 10,
 16.
 G. S. 109, § 12.

1 SECTION 11. The guardian of an insane person or spendthrift
 2 may be discharged by the probate court, upon the application of the
 3 ward or otherwise, when it appears that the guardianship is no
 4 longer necessary.

Termination of
 guardianship.
 R. S. 79, § 23.
 G. S. 109, § 26.
 P. S. 139, § 12.

OF MARRIED WOMEN.

1 SECTION 12. If a married woman owns property, real or per-
 2 sonal, a guardian may be appointed for her for the same causes, in
 3 the same manner and with the same powers and duties, as if she
 4 were sole, except as hereinafter provided. But a guardian shall
 5 not be so appointed without such notice to the husband as the court
 6 may order.

Appointment
 of guardian
 of married
 woman.
 G. S. 108, § 16.
 P. S. 139, § 13.

1 SECTION 13. Such guardian shall not have the care, custody or
 2 education of his ward, except in case of the insanity of her hus-
 3 band, or of his abandoning her by absenting himself from this
 4 commonwealth and making no sufficient provision for her.

Such guardian
 not to have
 custody, etc.,
 of ward,
 except, etc.
 G. S. 108, § 17.
 P. S. 139, § 14.

1 SECTION 14. Such guardian shall not apply the property of his
 2 ward to the maintenance of herself and her family while she is mar-
 3 ried, unless he is thereto authorized by the probate court on account

— not to apply
 property to her
 support with-
 out leave of
 probate court.

G. S. 108, § 18. of the inability of her husband suitably to maintain her or them, or 4
P. S. 139, § 15. for other cause which the court considers sufficient. 5

Guardian for SECTION 15. If a married woman is by reason of insanity or 1
insane married woman having right of dower, 2
etc. a guardian may be appointed for her in the same manner as if she 3
1856, 163, §§ 1, 2. were sole, with the powers and duties given to guardians of mar- 4
1857, 208, §§ 8, 9. ried women who own property, and the husband or any suitable 5
G. S. 108, § 19. person may be appointed such guardian. 6
P. S. 139, § 16.
1890, 259.

OF PERSONS OUT OF THE COMMONWEALTH.

Appointment of guardian of non-resident. SECTION 16. If a person who is liable to be put under guardian- 1
1783, 38, § 1. ship according to the provisions of this chapter resides out of the 2
R. S. 79, § 28. commonwealth and has any estate therein, a friend of such person 3
G. S. 109, § 13. or any one interested in his estate, in expectancy or otherwise, may 4
P. S. 139, § 17. apply to the probate court for a county in which there is such estate, 5
4 Allen, 466. which, after notice to all persons interested and a hearing and 6
examination, may appoint a guardian for him. 7

Powers, etc., of such guardian. SECTION 17. Such guardian shall have the same powers and 1
R. S. 79, § 29. duties relative to any estate of the ward found within the common- 2
G. S. 109, § 14. wealth and also relative to the person of the ward, if he comes to 3
P. S. 139, § 18. reside therein, as other guardians who are appointed under the 4
13 Met. 80. provisions of this chapter. 5
2 Allen, 206. 4 Allen, 321.

Form of bond to be given by him. SECTION 18. Such guardian shall give the bond prescribed in 1
R. S. 79, § 30. section one of chapter one hundred and forty-nine, except that the 2
G. S. 109, § 15. conditions relative to the inventory, the disposal of the estate and 3
1879, 184. effects and the account to be rendered by him shall be confined to 4
P. S. 139, § 19. such estate and effects as come to his hands in this commonwealth. 5

Proceedings for non-resident guardian of non-resident ward to receive ward's estate here. SECTION 19. If a person who is a resident in another state is 1
1875, 189. entitled to real or personal property of any description in this 2
1880, 154. commonwealth, and is under the guardianship of a person who is 3
P. S. 139, § 20. also resident in such other state, who produces to the probate court 4
1900, 232. of the county in which such property or the principal part thereof 5
is situated a full and complete and duly exemplified or authenticated 6
transcript from the records of a court of competent jurisdiction in 7
such other state, showing that he has there been appointed such 8
guardian, and has given a bond and security in double the value 9
of the property of such ward, then such transcript may be recorded 10
in such probate court, and such guardian shall be entitled to receive 11
from such court letters of guardianship of the estate of such ward 12
in this commonwealth which shall authorize him to care for and 13
manage the real and personal property of such ward, to collect the 14
rents and profits therefrom and to demand, sue for and recover any 15
such property, and to remove any of the movable property or 16
estate of such ward out of this commonwealth, if such removal will 17
not conflict with the terms and limitations attending the right by 18
which the ward holds the same. Such probate court may also 19
order any resident guardian, executor or administrator who has any 20
of the estate of such ward to deliver the same to any person who 21
has taken out letters of guardianship as aforesaid. 22

TEMPORARY GUARDIANS.

1 SECTION 20. Upon the petition of the mayor of a city, the select-
2 men of a town, the overseers of the poor of a city or town or other
3 person in interest, the judge of the probate court may, after giving
4 due notice according to the rules of the probate court, appoint a
5 temporary guardian of a minor, insane person or spendthrift and
6 may, with or without notice, remove or discharge him or terminate
7 the trust. If the court finds that the welfare of such minor requires
8 the immediate appointment of a temporary guardian of his person,
9 such appointment may be made without notice. A temporary guar-
10 dian shall proceed and continue in the execution of his duties, not-
11 withstanding an appeal from the decree appointing him, until it is
12 otherwise ordered by the supreme judicial court, or until the ap-
13 pointment of a permanent guardian, or until his trust is otherwise
14 legally terminated. .

Temporary
guardian, ap-
pointment of.
1878, 230.
P. S. 139, § 6.
1897, 135, § 1.
1900, 345, §§ 1, 3.
1901, 213, 523.

1 SECTION 21. Such temporary guardian shall, until otherwise
2 ordered, or until his removal or the appointment of a permanent
3 guardian, have the same powers and perform the same duties rela-
4 tive to the person and estate of the ward as permanent guardians,
5 and may be decreed the custody of the persons of minors, if the court
6 finds the parent or parents unfit therefor or if it finds one of them
7 unfit therefor and the other consents to such custody by the tempo-
8 rary guardian or if a temporary guardian is serving or appointed to
9 serve in place of a temporary guardian removed. If such temporary
10 guardian of a minor is appointed pending proceedings for an order
11 for custody under the provisions of section four or for the removal
12 of a guardian of a minor, he shall have the sole custody and control
13 of the ward during the pendency of such proceedings. Upon the
14 termination of his powers, a temporary guardian shall deliver to
15 the guardian or such person as is otherwise lawfully authorized to
16 receive it the estate of the ward in his hands. A guardian may
17 be admitted to prosecute an action commenced by a temporary
18 guardian.

— powers and
duties of.
1878, 230.
P. S. 139, § 6.
1897, 135, § 2.
1900, 345, §§ 2, 5.

REMOVALS, RESIGNATIONS, ETC.

1 SECTION 22. If a guardian who has been appointed either by a
2 testator or by the court becomes insane or otherwise incapable of
3 performing his trust or is unsuitable therefor, the probate court,
4 after notice to him and to all other persons interested, may remove
5 him. Upon the request of a guardian, the probate court may in its
6 discretion allow him to resign his trust. Upon such removal or
7 resignation, and upon the death of a guardian, another may be ap-
8 pointed in his stead.

Removal, etc.,
of guardian
and appoint-
ment of suc-
cessor.
1789, 46.
1817, 190, § 36.
R. S. 79, § 22.
G. S. 109, § 24.
P. S. 139, § 21.
4 Pick. 283.
8 Pick. 143.
4 Gray, 63.

105 Mass. 501.

128 Mass. 587.

155 Mass. 433.

GUARDIANS AD LITEM AND NEXT FRIEND.

1 SECTION 23. If, under the terms of a written instrument or
2 otherwise, a minor or person under disability, or a person or per-
3 sons not ascertained or not in being, may be or may become inter-
4 ested in any property real or personal, the court in which any action,
5 petition or proceeding of any kind relative to or affecting any
6 such estate is pending, except the court of land registration, may,

Appointment
of guardian
ad litem.
1896, 456, § 1.

upon the representation of any party thereto, or of any person interested, appoint a suitable person to appear and act therein as guardian ad litem or next friend of such minor or person or persons under disability or not ascertained or not in being; and a judgment, order or decree in such proceedings, made after such appointment, shall be conclusive upon all persons for whom such guardian ad litem or next friend was appointed.

Cost of appearance.
1896, 456, § 2.

SECTION 24. The reasonable expenses of such guardian ad litem or next friend, including his compensation and that of his counsel, shall be determined by the court and paid as it may order, either out of the estate or by the plaintiff or petitioner. If such expenses are to be paid by the plaintiff or petitioner execution therefor may issue in the name of the guardian ad litem or next friend.

GENERAL POWERS AND DUTIES OF GUARDIANS.

Powers and duties of guardians.

1726-7, 12, § 5.
1731-2, 14, § 5.
1737-8, 9, § 3.
1783, 38, § 4.
1806, 102.
R. S. 79, § 17.
G. S. 109, § 18.
P. S. 139, § 29.
13 Mass. 237.
1 Pick. 314.
5 Pick. 431.
19 Pick. 346, 506.
8 Cush. 587.
12 Cush. 324.

SECTION 25. A guardian shall pay all just debts which are due from his ward out of the personal property, if sufficient, and, if not, out of the real property, upon obtaining a license for the sale thereof as provided in chapter one hundred and forty-six. He shall settle all accounts of his ward and demand, sue for and receive all debts due to him or, with the approval of the probate court, may compromise the same and give a discharge to the debtor. He shall appear for and represent his ward in all actions, suits and proceedings, unless another person is appointed for that purpose as guardian ad litem or next friend.

9 Gray, 84, 255.
5 Allen, 464.
10 Allen, 463.

97 Mass. 508.
100 Mass. 239.
101 Mass. 60.

106 Mass. 501.
111 Mass. 265.
133 Mass. 531.

155 Mass. 136.
168 Mass. 215, 573.
170 Mass. 499.

Same subject.

1726-7, 12, § 4.
1731-2, 14, § 4.
1737-8, 9, § 3.
1783, 38, § 4.
1806, 102.
R. S. 79, § 18.
G. S. 109, § 19.
P. S. 139, § 30.
20 Pick. 116.
4 Allen, 426.
8 Allen, 427.
10 Allen, 59.
109 Mass. 252.

SECTION 26. He shall manage the estate of his ward frugally and without waste, and shall apply the income and profits thereof, so far as may be necessary, to the comfortable and suitable maintenance and support of the ward and his family. If the income and profits are insufficient for that purpose, the guardian may sell the real property upon obtaining a license therefor, and shall apply the proceeds of such sale, so far as may be necessary, for the maintenance and support of the ward and his family.

120 Mass. 487. 160 Mass. 233.

Same subject.

1727, 5.
1783, 41, § 1.
R. S. 79, § 19.
1852, 248.
G. S. 109, § 20.
P. S. 139, § 31.
1 Pick. 221, 314.

SECTION 27. A guardian may, except when he has an interest adverse to that of the ward in the estate to be divided, make partition of his ward's real property if lying in common and undivided, either upon petition for partition or otherwise, as fully and in like manner as the ward could do if he were under no disability, may assign and set out dower in his ward's estate to any widow entitled thereto, and may appoint an appraiser of real property on an execution either against or in favor of his ward.

Support of minor child by parents.
1891, 358.

SECTION 28. The probate court may, upon the petition of a guardian entitled to the custody of his minor ward, during the lifetime of either or both of his parents, and after notice to all parties interested, order and require said parents or either of them to contribute to the support and maintenance of such minor in such amounts and at such times as it determines are just and reasonable. Such parent or parents may be required to give a bond conditioned

8 to comply with such order and payable to the judge of said court
9 and his successors in such sum and with such sureties as the court
10 orders. The court may from time to time, upon application of
11 either party, revise or alter such order or make such new order or
12 decree as the circumstances of the parents or the benefit of the
13 minor may require.

1 SECTION 29. If a minor, who has a father living, has property
2 sufficient for his maintenance and education in a manner more ex-
3 pensive than the father can reasonably afford, regard being had to
4 the situation of the father's family and to all the circumstances of
5 the case, the probate court may order that such expenses of the
6 maintenance and education of such child as it determines are rea-
7 sonable may be defrayed out of his own property ; and if necessary,
8 his real property upon obtaining license therefor may be sold for that
9 purpose by the guardian.

Application of
minor's prop-
erty to his
support during
father's life.
R. S. 78, § 2.
1844, 88.
G. S. 109, § 21.
P. S. 139, § 32.
2 Mass. 415.
4 Mass. 97.
8 Cush. 587.
164 Mass. 422.

1 SECTION 30. The probate court may, upon the application of the
2 guardian of an insane person or of a child or the guardian of a
3 child of an insane person, after notice to all other persons inter-
4 ested, authorize and require the guardian of such insane person to
5 apply to the maintenance and education of any child or children of
6 said ward such portion as the court orders of the income of the
7 ward, which is not required for his maintenance and support.

Support of
children of
insane person
under guar-
dianship.
1880, 166.
P. S. 139, § 33.

1 SECTION 31. The probate court for the county in which a guar-
2 dian of an insane person has been appointed may make an allowance
3 out of the estate of such insane person for the support of his wife,
4 to be paid to her by the guardian during the continuance of the
5 guardianship in such manner as the court orders.

— of wife of
insane person
under guar-
dianship.
1855, 458.
1856, 90.
G. S. 108, § 26.
1862, 116.
P. S. 139, § 34.
160 Mass. 233.

1 SECTION 32. The probate court may, after notice to all persons
2 interested, authorize guardians to obtain by purchase the release
3 and conveyance of a right of dower or of curtesy, homestead, life
4 estate, estate for years or other interest, vested or contingent, held
5 or owned by any person in or to any real property of their wards,
6 and to make any contract relative to such rights or interests which
7 may be necessary to effect such purchase.

Guardians may
obtain releases
of dower, etc.,
in ward's real
property.
1869, 219, § 1.
P. S. 139, § 35.

1 SECTION 33. If property, rights or benefits given by will or
2 by provision of law depend upon the election, waiver or other
3 act of a person incompetent by reason of insanity or minority to
4 exercise or perform the same, his guardian may make such election
5 or waiver or perform such act.

Election or
waiver by
guardian.
1871, 37.
P. S. 139, § 36.
102 Mass. 568.
153 Mass. 127.

1 SECTION 34. Upon taking an inventory, the estate and effects
2 comprised therein shall be appraised by three appraisers, who shall
3 be appointed and sworn as is required by law relative to the in-
4 ventory of the estate of a deceased person.

Appraisal of
estate.
1817, 190, § 34.
R. S. 79, § 20.
G. S. 109, § 17.
P. S. 139, § 37.

1 SECTION 35. The probate court may, upon the application of a
2 guardian or of any person interested in the estate of a ward, after
3 notice to all other persons interested, authorize or require the
4 guardian to sell and transfer any personal property held by him as

Sale of per-
sonal property
of ward.
1817, 190, § 33.
1820, 54, § 3.
R. S. 79, § 21.
G. S. 109, § 22.

P. S. 139, § 38.
2 Pick. 243.
8 Allen, 15.
120 Mass. 102.
149 Mass. 375.
168 Mass. 576.

guardian and to invest the proceeds thereof and all other money 5
in his hands in such manner as may be most for the interest of all 6
concerned. Said court may make such further order and give such 7
directions as the case may require for the management, investment 8
and disposition of the estate in the hands of the guardian. 9

Transfer of
estate of ward
who has no
guardian in
this state.
1896, 122, § 2.
1877, 127.
P. S. 139, § 40.

SECTION 36. An executor, administrator or trustee who has in 1
his hands personal property belonging to a person under guardian- 2
ship residing out of this commonwealth and having no guardian ap- 3
pointed therein may pay over and transfer the whole or any part 4
of such personal property to a guardian, trustee, or committee ap- 5
pointed by competent authority in the state or country in which 6
such person resides, upon the terms and in the manner required 7
by the provisions of section twenty-five of chapter one hundred and 8
forty-six. 9

Effect of mar-
riage of female
ward.
R. S. 79, § 23.
G. S. 109, § 26.

SECTION 37. The marriage of a female under guardianship as a 1
minor shall deprive her guardian of all right to her custody and 2
education, but not of his right to the possession of her property. 3

P. S. 139, § 41.

15 Gray, 445.

Recovery of
property of
ward which
has been
embezzled, etc.
1726-7, 12, §§ 2, 3.
1731-2, 14, §§ 2, 3.
1737-8, 9, § 2.
1783, 38, § 3.
R. S. 79, § 27.
1857, 71, § 2.
G. S. 109, § 30.
P. S. 139, § 42.
11 Gray, 210.

SECTION 38. Upon complaint to the probate court by a guardian, 1
ward, creditor or other person interested in the estate of a ward 2
or by a person having claims thereto in expectancy as heir or other- 3
wise, against any one suspected of having fraudulently received, 4
concealed, embezzled or conveyed away any of the property, real 5
or personal, of the ward, the court may cite and examine such sus- 6
pected person, although he is the guardian, in the manner and 7
subject to the penalties provided relative to persons suspected of 8
fraudulently receiving, concealing or embezzling the estate of a de- 9
ceased person. 10

Provisions of
this chapter
not to prevent
appointment
of guardian
ad litem or
next friend.
R. S. 79, § 8.
G. S. 109, § 7.
P. S. 139, § 43.
1896, 456, § 3.
8 Cush. 507.

SECTION 39. The provisions of this chapter shall not affect the 1
power of a court or trial justice to appoint a guardian to defend 2
the interests of a minor impleaded in such court or before such 3
trial justice, or interested in a suit or matter there pending, nor 4
the power of such court or justice to appoint or allow a person, as 5
next friend for a minor, to commence, prosecute or defend a suit 6
in his behalf. 7

111 Mass. 265.

116 Mass. 377.

CONSERVATORS OF THE PROPERTY OF AGED PERSONS.

Conservators
of the property
of aged per-
sons.
1898, 527, § 1.
1901, 125.

SECTION 40. If a person by reason of advanced age or mental 1
weakness is unable to properly care for his property the probate 2
court of the county in which he resides may, upon his petition or 3
of one or more of his friends, appoint a conservator of his property. 4
Upon the filing of such petition, the court shall appoint a time and 5
place for a hearing, and shall cause at least fourteen days' notice 6
thereof to be given to the person for whom a conservator is to be 7
appointed if he is not the petitioner. If at the hearing it appears 8
that such person is incapable of properly caring for his property a 9
conservator shall be appointed who shall have the charge and man- 10
agement of such property subject to the direction of the court. 11
Such conservator may be discharged by the probate court upon the 12

13 application of the ward, or otherwise, when it appears that the con-
14 servatorship is no longer necessary.

1 SECTION 41. Such conservator shall give such bond as is re-
2 quired of guardians of insane persons, and all provisions of law
3 relative to the management, sale or mortgage of the property of
4 insane persons shall apply to such conservator.

Bond of con-
servators.
1898, 527, § 2.

AGENTS OF NON-RESIDENT GUARDIANS AND CONSERVATORS.

1 SECTION 42. The provisions of sections eight, nine and ten of
2 chapter one hundred and thirty-nine shall apply to non-resident
3 guardians and conservators.

1893, 118.

Agent for
non-resident
guardian or
conservator.
1889, 462.

CHAPTER 146.

OF SALES, MORTGAGES AND LEASES OF REAL PROPERTY BY EXECU-
TORS, ADMINISTRATORS AND GUARDIANS.

SECTIONS 1-18. — Sales.

SECTIONS 19-24. — Sales by Guardian for Maintenance or Investment.

SECTION 25. — Sales by Guardian of Non-Resident Ward.

SECTIONS 26-28. — Mortgages.

SECTION 29. — Leases.

SECTIONS 30-33. — By Foreign Executors, etc.

SALES.

1 SECTION 1. If the personal property of a deceased person is in-
2 sufficient to pay his debts and legacies with the charges of admin-
3 istration, his executor or administrator shall, for the purpose of
4 making such payment, sell his real property in the manner herein-
5 after provided, and the proceeds of such sale shall be assets in the
6 hands of the executor or administrator in like manner as if they had
7 originally been part of the personal property of the deceased.

Sale of real
property to
pay debts, etc.
1696, 10, § 2.
1783, 32, § 1.
1818, 112, § 3.
R. S. 65, §§ 8, 9;
71, §§ 1, 20.
G. S. 96, §§ 7, 8;
102, §§ 1, 19.
P. S. 134, § 1.

18 Pick. 285.
6 Cush. 493.

3 Gray, 205.
4 Allen, 359.

105 Mass. 33.
122 Mass. 282.

125 Mass. 363.
140 Mass. 351.

1 SECTION 2. The real property so liable to be sold shall include
2 all land of the deceased, all rights of entry and of action and all
3 other rights and interests in land, which by law would descend to
4 his heirs or which would have been liable to attachment or execution
5 by a creditor of the deceased in his lifetime: but the title passed by
6 any such sale shall be subject to the right of dower of the wife or to
7 the right of curtesy of the husband of the deceased, and no claim by
8 entry or by action to land fraudulently conveyed by the deceased
9 shall be made unless within five years after the decease of the
10 grantor.

Real property
liable to be
sold.
1805, 90, § 5.
R. S. 71, § 11.
G. S. 102, § 11.
1881, 112, § 1.
P. S. 134, § 2.
167 Mass. 209.

1 SECTION 3. Real property not devised shall be first chargeable
2 with the payment of debts or legacies in exoneration of the real
3 property devised. If a different intention appears by the will, it
4 shall control.

P. S. 134, § 3.

6 Mass. 149.

8 Pick. 478.

7 Cush. 161.

Undevised
property first
liable to be
sold.
R. S. 62, § 30.
G. S. 92, § 34.

Sale of real
property of
ward.

1.83, 38, § 4.
1804, 102.
1818, 112, § 1.
1830, 140, § 1.
R. S. 71, § 26.
G. S. 102, § 24.
P. S. 140, § 1.
1899, 147.

SECTION 4. If the personal property in the hands of a guardian is insufficient to pay all the debts of the ward, with the charges of managing his property, the guardian may be licensed to sell the ward's real property for that purpose or for the purpose of raising money with which to pay, in whole or in part, any incumbrance existing on real property when the title thereto came to his ward, in like manner and upon like terms, except as hereinafter provided, as are provided for a sale of real property by an executor or administrator.

What court
may grant
license to sell.

1696, 10, § 2.
1739-70, 20.
1783, 32, § 1.
1806, 102.
1817, 190, § 10.
1818, 112, §§ 1, 3.

SECTION 5. A license to an executor or administrator to sell the real property of a deceased person or to a guardian to sell the real property of his ward may be granted by the probate court from which the letters testamentary or of administration or of guardianship issued.

1830, 45; 140, § 1.

R. S. 71, §§ 2, 30; 72, § 6.

G. S. 102, §§ 2, 37.

P. S. 134, § 4; 140, § 13.

Form of
petition for
license to sell.

1783, 32, § 1.
R. S. 71, § 3.
G. S. 102, § 3.
P. S. 134, § 5;
140, § 4.
7 Met. 454.
8 Met. 51.
5 Cush. 524.
14 Gray, 500.

SECTION 6. To obtain such license, the executor, administrator or guardian shall file a petition stating the value of the personal property in his hands, the amount of the charges of administration or management, the amount of debts due from the deceased or ward, as nearly as they can be ascertained, and, if a person dies testate, the amount of any legacies given in his will. If it is necessary to sell a part only of the real property, the value, description and condition of the part which it is proposed to sell may also be set forth, and the court may direct what specific part shall be sold.

Whole may be
sold if partial
sale would in-
jure residue.

1783, 32, § 2.
1818, 112, § 1.
1829, 110, § 1.
1830, 140, § 1.
R. S. 71, §§ 4, 27.
G. S. 102, §§ 4,
25.

SECTION 7. If it is represented in such petition and appears to the court to be necessary to sell a part of the real property, and that by such partial sale the residue of the property or of a specific part or piece thereof would be greatly injured, the court may license a sale of the whole of the property or of such part thereof as may appear best.

1880, 152, § 2.

P. S. 134, § 6; 140, § 2.

6 Gray, 535.

14 Gray, 500.

102 Mass. 262.

Marshalling of
assets accord-
ing to will.

R. S. 71, § 7.
G. S. 102, § 7.
P. S. 134, § 8.
6 Mass. 149.
18 Pick. 285.

SECTION 8. If a will contains a provision for the payment of debts, or which may require or induce the court to marshal the assets in a manner different from that which the law would otherwise provide, the executor shall set forth in the petition a copy of the will and the court shall marshal the assets accordingly, so far as can be done consistently with the rights of the creditors.

Public or pri-
vate sale of
land.

1783, 32, §§ 1, 2;
38, § 4.
1806, 102.
1817, 182, § 1.
1818, 112, § 1.
1830, 140, § 1.
R. S. 71, §§ 10,
17, 26.
G. S. 102, §§ 10,
17, 24.
1872, 278.
P. S. 134, § 11;
140, §§ 1, 18.
1885, 258.
1886, 137, § 1.
1899, 147.
4 Cush. 54.

SECTION 9. Upon the petition of an executor or administrator for a license to sell the real property of the deceased or of a guardian to sell the real property of his ward, the court may, if the petitioner so requests, authorize him to sell such property at public auction and to convey to the purchaser all the estate, right, title and interest which the deceased had therein at the time of his death and which was then chargeable with the payment of his debts or which the ward has at the time of the sale. If the petitioner requests that such property may be sold by private sale and the court, upon a hearing, finds that an advantageous offer for the purchase thereof has been made to the petitioner, and that the interests of

12 all parties will be promoted by an acceptance of such offer, it may
 13 authorize a conveyance by private sale in accordance with such
 14 offer or upon other terms; but such petitioner so authorized may
 15 nevertheless sell such property by public auction in accordance with
 16 the provisions of this chapter.

2 Gray, 154.
 4 Allen, 184.
 147 Mass. 489.

1 SECTION 10. A license shall not be granted until notice of the
 2 petition and of the time and place appointed for hearing the same
 3 has been given by serving such notice personally on all persons
 4 interested in the estate at least fourteen days before the time
 5 appointed for the hearing, or by publication once in each of three
 6 successive weeks in such newspaper as the court orders.

8 Met. 51, 355.

9 Cush. 223.

13 Gray, 513.

Notice of petition for license to sell.
 1783, 32, § 1.
 1817, 190, § 10.
 1830, 45.
 R. S. 71, § 8.
 G. S. 102, § 8.
 P. S. 134, § 9.
 1886, 137, § 2.
 1 Mass. 256.

1 SECTION 11. A license to sell real property shall not be granted
 2 to a guardian until notice, by public advertisement or otherwise
 3 as the court orders, has been given to the next of kin of the ward,
 4 to all his heirs apparent or presumptive and to all persons interested
 5 in the estate.

G. S. 102, §§ 30, 40.

P. S. 140, §§ 15, 16.

License to be granted only after notice.
 1783, 32, § 1.
 1814, 71.
 1817, 190, § 10.
 1830, 45.
 R. S. 71, §§ 8, 29;
 72, § 8.

1 SECTION 12. A license shall not be granted to an executor or
 2 administrator, if any of the persons interested in the estate give bond
 3 to him in a sum and with sureties approved by the court, condi-
 4 tioned to pay, so far as the personal property of the deceased shall
 5 be insufficient therefor, all legacies mentioned in the petition, all
 6 debts therein mentioned which shall eventually be found due from
 7 the estate and the charges of administering the estate.

No license if bond given to pay debts.
 1817, 190, § 10.
 R. S. 71, § 9.
 G. S. 102, § 9.
 P. S. 134, § 10.
 5 Allen, 118.
 100 Mass. 224.

1 SECTION 13. A license to sell shall not be granted to the guar-
 2 dian of an insane person or spendthrift who resides in this common-
 3 wealth, unless seven days' notice of the petition therefor has been
 4 given to the overseers of the poor of the city or town in which the
 5 ward is an inhabitant or resides. Such notice may be served upon
 6 any one of such overseers.

R. S. 71, § 28; 72, § 9.

G. S. 102, § 38.

1874, 202.

P. S. 140, § 14.

License to guardian of insane person, etc., only after notice to overseers of poor.
 1806, 102.
 1818, 112, § 1.
 1826, 64.
 1830, 140, § 1.

1 SECTION 14. The executor, administrator or guardian shall give
 2 notice of the time and place of the sale by auction by causing notices
 3 thereof to be posted, thirty days at least before the sale, in a public
 4 place in the city or town in which the land lies, and in two adjoining
 5 cities or towns, if there are so many in the county, or, if the
 6 court granting the license so orders, by publishing the notice once
 7 in each of three successive weeks in a newspaper.

1877, 158, § 1.

P. S. 134, § 12; 140, § 17.

Notice of sale by auction.
 1719-20, 10, § 2.
 1783, 32, § 1.
 1814, 71.
 1829, 108, § 2.
 R. S. 71, §§ 15, 35; 72, §§ 12, 15.
 G. S. 102, §§ 15, 41.

1 SECTION 15. An affidavit of the executor, administrator or guar-
 2 dian or of the person employed by him to give such notice, filed and
 3 recorded with a copy of the notice in the registry of probate, or such
 4 affidavit made by any person and filed and recorded with such copy
 5 by permission of the court upon satisfactory evidence that the notice
 6 was given as ordered, shall be admitted as evidence of the time,
 7 place and manner in which the notice was given.

1876, 71, 76.

P. S. 134, § 13; 140, § 17.

1888, 148, § 2; 380.

8 Met. 355.

Perpetuation of evidence of the giving of notice.
 1788, 66, §§ 6, 7.
 1812, 24.
 R. S. 71, §§ 16, 35; 72, §§ 12, 15.
 1853, 393.
 G. S. 102, §§ 16, 41.

Adjournment
of sale.
1817, 190, § 13.
R. S. 71, §§ 17,
18, 35; 72, § 15.
G. S. 102, §§ 17,
18, 41.
P. S. 134, § 14;
140, § 17.
15 Mass. 175.

SECTION 16. If at the time appointed for such sale the executor, administrator or guardian considers it for the interest of all persons concerned that the sale should be postponed, he may adjourn it for not more than fourteen days, and notice of such adjournment shall be given by a public declaration at the time and place first appointed for the sale. If the adjournment is for more than one day, further notice of the sale shall be given by posting or publishing, as time and circumstances may admit.

Recovery of
possession of
land fraudu-
lently con-
veyed.
R. S. 71, §§ 12,
13.
G. S. 102, §§ 12,
13.
P. S. 134, § 15.
5 Cush. 524.
14 Gray, 500.
8 Allen, 89.
102 Mass. 262.
105 Mass. 33.
132 Mass. 462.
147 Mass. 491.

SECTION 17. If an executor or administrator is licensed to sell land which has been fraudulently conveyed by the deceased or is fraudulently held by another person for him, or land to which the deceased had a right of entry or of action or of which he had a right to a conveyance, he may, within one year after such license, sell the land without first obtaining possession thereof by entry or action, or he may without a formal entry bring an action to obtain possession by virtue of such license, demanding the land as executor or administrator, and may sell the same within one year after possession is obtained.

Sale by ad-
ministrator for
distribution.
1890, 266.

SECTION 18. The probate court may, upon the petition of an administrator, with the consent of all parties interested or after notice, license him to sell the real property or any undivided interest therein belonging to the estate of the intestate, unless the appraisal shows that it exceeds fifteen hundred dollars in value, in such manner and upon such notice as the court orders, for the purpose of distribution; and the net proceeds of such sale, after deducting the expenses thereof and such amount as may be required for the payment of debts in consequence of a deficiency in the personal property, shall, after two years from the time of the filing of the administrator's bond, be distributed to the persons who would have been entitled to said real property and in the proportions to which they would have been entitled had it not been sold.

SALES BY GUARDIAN FOR MAINTENANCE OR INVESTMENT.

—by guar-
dian for
maintenance
or investment.
1693-4, 18, §§ 3, 4.
1783, 32, § 5; 38,
§ 4.
1806, 102.
1818, 112, § 1.
1826, 64.
1828, 121.
1830, 45; 140, § 1.
R. S. 72, §§ 1, 2.
G. S. 102, § 26.
1867, 231.
P. S. 140, § 3.

SECTION 19. If the income of the estate of a ward is insufficient to maintain him and his family or if it appears that it would be for his benefit that his real property or any part thereof or any standing or growing wood thereon should be sold and the proceeds placed on interest or invested in a productive security, his guardian may sell such real property or wood upon obtaining a license therefor and proceeding as hereinafter provided. If standing or growing wood is so sold, the guardian may grant to the purchaser the privilege of entering upon the land and cutting and carrying away such wood within such time as the guardian may allow.

Form of
petition and
of license.
R. S. 72, § 7.
G. S. 102, § 27.
P. S. 140, § 4.

SECTION 20. To obtain such license, the guardian shall file a petition setting forth the condition of the estate and the facts and circumstances on which the petition is founded. If after an examination, on the oath of the petitioner or otherwise, the court finds that it would be for the benefit of the ward that the sale petitioned for should be made, it may grant a license therefor, specifying therein whether the sale is to be made for the maintenance of

8 the ward and his family, or in order that the proceeds may be
9 placed on interest or invested as aforesaid.

1 SECTION 21. If the sale is made for the maintenance of the ward
2 and his family, the guardian shall apply the proceeds, so far as
3 necessary, to that purpose, and shall place the residue on interest
4 or invest it according to his best judgment until the capital is
5 wanted for such maintenance; in such case, the capital may be
6 used for that purpose as if it had been personal property.

Disposal of
proceeds of
sale if made for
maintenance.
R. S. 72, § 3.
G. S. 102, § 20.
P. S. 140, § 5.

1 SECTION 22. If the property is sold in order to place on interest
2 or invest the proceeds, the guardian shall make the investment ac-
3 cording to his best judgment, or in pursuance of any order of the
4 court relative thereto.

— if made for
investment.
R. S. 72, § 4.
G. S. 102, § 30.
P. S. 140, § 6.
8 Allen, 125.

1 SECTION 23. A sale of the property of a minor for the purpose
2 of investment may be made upon the petition of the guardian or
3 any friend of the minor, and the court may authorize the guardian
4 or another person to sell and convey the property. The provisions
5 of this chapter relative to licenses and sales upon the petitions of
6 guardians shall, except as provided in the following section, apply
7 to licenses and sales under the provisions of this section.

Property of
minor may be
sold by person
other than the
guardian.
1838, 190, § 1.
G. S. 102, § 31.
P. S. 140, § 7.

1 SECTION 24. If the sale is made by a person other than the
2 guardian, the proceeds shall be forthwith paid to the guardian
3 upon his giving to the judge of probate a bond with sufficient
4 sureties conditioned to account for such proceeds. If there is no
5 guardian, the proceeds shall be placed on interest or invested by
6 the person authorized to sell the property, in like manner as is
7 required of a guardian.

Disposal of
proceeds of
sale in such
case.
1838, 190, § 2.
1850, 45.
G. S. 102, § 32.
P. S. 140, § 8.

SALES BY GUARDIAN OF NON-RESIDENT WARD.

1 SECTION 25. A guardian appointed within the commonwealth,
2 whose ward removes from or resides out of this commonwealth, may
3 sell the real property of his ward, and transfer and pay over the
4 whole or any part of the proceeds and the whole or any part of the
5 ward's personal property to a guardian, trustee, or committee ap-
6 pointed by competent authority in the state or country in which the
7 ward resides, upon such terms and in such manner as the probate
8 court by which he was appointed may, after notice to all parties
9 interested, decree upon petition filed therefor.

Transfer of
property of
non-resident
ward to non-
resident guar-
dian, etc.
1858, 117.
G. S. 109, § 23.
1861, 130.
1862, 139.
1866, 122, § 1.
P. S. 139, § 39.
149 Mass. 57.

MORTGAGES.

1 SECTION 26. The probate court may, upon petition and after
2 notice to all persons interested, if upon a hearing it appears to be
3 for the benefit of the estate, authorize an executor, administrator with
4 the will annexed, or administrator to mortgage any of the real
5 property for the purpose of paying debts, legacies or charges of
6 administration or for the purpose of paying an existing lien or
7 mortgage on the estate of the deceased; or it may authorize such
8 executor or administrator to make an agreement for the extension
9 or renewal of such existing mortgage.

Executor or
administrator
may mortgage,
when.
1864, 212, §§ 1, 2.
1875, 151.
1876, 79, § 1.
P. S. 134, § 19.
1895, 140.

Guardian may
mortgage.
1864, 212, § 3.
1871, 282, § 1.
1873, 280, § 1.

SECTION 27. The probate court may, upon petition of a guardian, 1
if, after notice and a hearing, it appears to be necessary or exped- 2
ient, authorize him to mortgage any real property of his ward. 3

P. S. 140, § 11.

Form of
petition and
decree.
1864, 212, §§ 1, 2.
1871, 282, § 2.
1876, 79, § 2.
P. S. 134, § 20;
140, § 12.

SECTION 28. The petition under the provisions of the two pre- 1
ceding sections shall set forth a description of the estate to be mort- 2
gaged, the amount of money necessary to be raised and the purposes 3
for which such money is required; and the decree of the court upon 4
such petition shall fix the amount for which the mortgage may be 5
given and the rate of interest which may be paid thereon, and may 6
order the whole or any part of the money secured by the mortgage 7
to be paid from time to time out of the income of the property 8
mortgaged. 9

LEASES.

Lease of real
property of
ward.
1894, 128.

SECTION 29. The probate court may, upon the petition of a 1
guardian setting forth a description of the real property of his ward, 2
the reason why it is necessary or expedient to give a written lease 3
thereof and the length of the term, if, after notice and a hearing it 4
appears to be necessary or expedient, authorize such guardian to 5
give a written lease of the real property of his ward, and the decree 6
of the court shall fix the term and the amount for which it may be 7
leased. 8

BY FOREIGN EXECUTORS, ETC.

Foreign exec-
utor, etc., may
be licensed to
sell real
property.
1817, 182, § 2.
R. S. 71, § 21.
G. S. 102, § 20.
P. S. 134, § 16.
1901, 315.

SECTION 30. An executor or administrator appointed in another 1
state or country upon the estate of a person who was not at the 2
time of his death a resident of this commonwealth and upon whose 3
estate administration has not been granted in this commonwealth, 4
duly qualified and acting, may file an authenticated copy of the 5
record of his appointment and of his bond in the probate court for 6
any county in which there is real property of the deceased: and 7
such executor or administrator, after such notice to the treasurer 8
and receiver general, creditors and all persons interested as the 9
court may order, may be licensed to sell said real property or an un- 10
divided interest in real property in such manner and upon such notice 11
as the court orders. But such license shall not be granted unless 12
the court finds that the whole of the real property of the deceased 13
in this commonwealth does not exceed fifteen hundred dollars in 14
value, that six months have expired since the death of the deceased, 15
that the executor or administrator has given a sufficient bond and 16
will be liable to account for the proceeds of the sale in the state or 17
country in which he was appointed, and that no creditor or other 18
person interested will be prejudiced thereby. The net proceeds of 19
such sale, after deducting the expenses thereof and after the payment 20
and satisfaction of all claims against said estate in this common- 21
wealth, may be taken by said foreign executor or administrator out 22
of this commonwealth to be accounted for in the court in which he 23
received his appointment. 24

Foreign guar-
dian may be
licensed to sell
real property
of ward.

SECTION 31. If a minor, insane person or spendthrift, who 1
resides out of this commonwealth, is under guardianship in the state 2
or country in which he resides and has no guardian appointed in this 3

4 commonwealth, the foreign guardian may file an authenticated copy
5 of his appointment in the probate court for any county in which
6 there is real property of the ward ; after which upon petition he
7 may be licensed to sell, mortgage or lease the real property of the
8 ward in any county, for the purposes, in the manner and upon the
9 terms provided in this chapter for a guardian appointed in this
10 commonwealth, except as hereinafter provided.

1817, 182, § 1.
R. S. 71, § 31;
72, § 14.
G. S. 102, § 33.
P. S. 140, § 9.

1 SECTION 32. If the court finds that such foreign guardian has
2 given bond with sufficient surety or sureties, in the state or coun-
3 try in which he was appointed, to account for the proceeds of such
4 sale, mortgage or lease, and if an authenticated copy of such bond
5 is filed in said court, no further bond shall be required : otherwise, be-
6 fore such license is granted, he shall give bond payable to the judge
7 of said court and his successors with sufficient surety or sureties and
8 with condition to account for and dispose of said proceeds according
9 to law.

Bond in certain
cases.
1817, 182, § 2.
R. S. 71, §§ 32,
33; 72, § 17.
G. S. 102, §§ 34-
36.
P. S. 140, § 10.

1 SECTION 33. A foreign executor, administrator or guardian who
2 has been licensed to sell real property shall, except as otherwise
3 provided, give notice of the time and place of sale, and otherwise
4 proceed as is provided for an executor, administrator or guardian
5 appointed in this commonwealth ; and the evidence of such notice
6 may be perpetuated in the same manner.

Notice of sale,
etc.
1817, 182.
R. S. 71, § 24.
G. S. 102, § 23.
1871, 122, § 2.
P. S. 134, § 18.
1901, 315, § 1.

CHAPTER 147.

OF TRUSTS.

- SECTIONS 1-3. — Creation of Trusts.
- SECTIONS 4-13. — Appointment and Removal of Trustees.
- SECTION 14. — Agents of Non-resident Trustees.
- SECTIONS 15-17. — Sale of Trust Estate.
- SECTIONS 18, 19. — Mortgage of Trust Estate.
- SECTION 20. — Distribution of Trust Estate.
- SECTIONS 21-23. — Trusts for the Benefit of Creditors.

CREATION OF TRUSTS.

1 SECTION 1. No trust concerning land, except such as may arise
2 or result by implication of law, shall be created or declared unless
3 by an instrument in writing signed by the party or by the attorney
4 of the party creating or declaring the trust.

Creation of
trust concern-
ing land.
29 Car. 11. c. 3,
§ 7.
1692-3, 15, § 5.
1783, 37, § 3.

R. S. 59, § 30.	10 Cnsh. 458.	109 Mass. 581.	118 Mass. 108.
G. S. 100, § 19.	10 Allen, 15.	110 Mass. 392.	137 Mass. 184.
P. S. 141, § 1.	11 Allen, 15, 542.	112 Mass. 171.	158 Mass. 146.
12 Pick. 240.	103 Mass. 484.	113 Mass. 372.	160 Mass. 195, 538.

1 SECTION 2. If a trust concerning land is created or declared by
2 such instrument, the recording of the instrument in the registry of
3 deeds for the county or district in which the land lies shall be
4 equivalent to actual notice to every person who claims under a
5 conveyance, attachment or execution thereafter made or levied.

Record to be
notice of trust.
R. S. 59, § 32.
G. S. 100, § 21.
P. S. 141, § 2.

Purchasers,
etc., without
notice.
R. S. 39, § 31.
G. S. 100, § 20.
P. S. 141, § 3.
111 Mass. 270.
168 Mass. 118.
173 Mass. 378.

SECTION 3. No trust concerning land, whether implied by law or created or declared by the parties, shall defeat the title of a purchaser for a valuable consideration and without notice of the trust, nor prevent a creditor who has no notice of the trust from attaching the land or from taking it on execution in like manner as if no such trust existed.

APPOINTMENT AND REMOVAL OF TRUSTEES.

Appointment
of testamentary
trustee.
1845, 158.
1855, 307, § 1.
G. S. 100, § 7.
P. S. 141, § 4.

SECTION 4. If a testator has omitted in his will to appoint a trustee in this commonwealth and such appointment is necessary to carry into effect the provisions of the will, the probate court may, after notice to all persons interested, appoint a trustee who shall have the same powers, rights and duties and the same title to the estate as if he had been originally appointed by the testator.

Appointment
to fill vacancy.
1817, 190, §§ 40,
41.
R. S. 69, §§ 7, 8.
1843, 19.
1852, 212.
G. S. 100, § 9.
1877, 81.
P. S. 141, § 5.
4 Met. 330.
12 Cush. 41.
1 Gray, 220.

SECTION 5. If a trustee under a written instrument declines, resigns, dies or is removed before the objects of the trust are accomplished and such instrument makes no adequate provision for supplying the vacancy, the supreme judicial court, the superior court or the probate court shall, after notice to all persons interested, appoint a new trustee to act solely or jointly with the others as the case may be.

115 Mass. 424.
117 Mass. 219.

120 Mass. 412.
121 Mass. 568.

128 Mass. 398.
129 Mass. 339, 513.

102 Mass. 11.
148 Mass. 431.
149 Mass. 92.

Trust estate to
vest in new
trustee on his
giving bond,
etc.
1817, 190, § 40.
R. S. 69, § 8.
1843, 19.
1852, 212.
G. S. 100, §§ 9,
10.
1878, 254, § 1.
P. S. 141, § 6.
5 Gray, 336.
5 Allen, 540.
115 Mass. 424.
132 Mass. 405.
134 Mass. 426.

SECTION 6. A new trustee appointed under the provisions of the preceding section, or appointed in the place of a former trustee in conformity with a written instrument creating a trust, shall, upon giving such bond as may be required, have the same powers, rights and duties and the same title to the estate, whether as a sole or a joint trustee, as if he had been originally appointed; and the court may order any conveyances to be made by the former trustee or his representatives or by the other remaining trustees which it may find proper or convenient to vest the trust estate in the new trustee either solely or jointly with the others.

159 Mass. 484.

Return of in-
ventory may
be dispensed
with, when.
1817, 190, § 41.
R. S. 69, § 9.
G. S. 100, § 11.
P. S. 141, § 14.

SECTION 7. If a trustee is appointed by the probate court as the successor of a prior trustee, the court may dispense with the making and return of an inventory if it appears to be unnecessary, and in such case the condition of the bond shall be altered accordingly.

If inventory
required,
estate to be
appraised.
R. S. 69, § 10.
G. S. 100, § 13.
P. S. 141, § 15.

SECTION 8. If an inventory is required to be returned by a trustee, the estate and effects shall be appraised by three suitable persons, who shall be appointed and sworn as is required by law relative to the inventory of the estate of a deceased person.

Non-resident
trustee to take
letters of trust,
when.
1871, 327, § 1.
P. S. 141, § 7.

SECTION 9. If a trustee who derives his appointment or authority from a court which has no jurisdiction within this commonwealth holds land in this commonwealth in trust for persons resident here he shall, upon petition to the probate court in the county in which the land lies, and after notice, be required to take out letters of trust from said court; and upon his neglect or refusal so to do, the court shall declare such trust vacant, and shall appoint a new

8 trustee, in whom the trust estate shall vest in like manner as if he
9 had been originally appointed or authorized by said court.

1 SECTION 10. The notice to the trustee required by the provisions
2 of the preceding section may be given by serving on him a copy of
3 the petition, and of the citation of the court issued thereon, four-
4 teen days at least before the time fixed for the return of such cita-
5 tion, or by such other notice as the court may order.

Non-resident trustee to take letters of trust, when.
1871, 327, § 2.
P. S. 141, § 8.

1 SECTION 11. The supreme judicial court, the superior court or
2 the probate court may, upon petition of a party beneficially inter-
3 ested in the trust and after notice to the trustee and all persons in-
4 terested, remove a trustee under a written instrument if it finds that
5 such removal is for the interests of the beneficiaries of the trust or
6 if the trustee has become insane or otherwise incapable of perform-
7 ing his trust or is unsuitable therefor.

Removal of trustee.
1817, 190, § 41.
R. S. 69, § 7.
1843, 19.
1852, 212.
G. S. 100, § 8.
P. S. 141, § 9.
1 Gray, 220.
110 Mass. 225.
114 Mass. 356.
118 Mass. 215.

121 Mass. 568. 145 Mass. 490.

1 SECTION 12. A trustee may upon his own request resign his
2 trust, if the court which is authorized to appoint him finds it proper
3 to allow such resignation.

Resignation of trustee.
1817, 190, § 39.
R. S. 69, § 5.

G. S. 100, § 5. 1874, 352, § 1. P. S. 141, § 10. 6 Gray, 428.

1 SECTION 13. A person who succeeds to a trust as executor or
2 administrator of a former trustee shall not be required to accept
3 such trust.

Executor, etc., of former trustee.
1817, 190, § 39. R. S. 69, § 6. G. S. 100, § 6. P. S. 141, § 11.

AGENTS OF NON-RESIDENT TRUSTEES.

1 SECTION 14. The provisions of sections eight, nine and ten of
2 chapter one hundred and thirty-nine shall apply to non-resident
3 trustees, except that said writing shall be filed in the clerk's office
4 of the court which appointed him if he is appointed by a court
5 other than the probate court.

Agent of non-resident trustee.
1889, 462.
1893, 118.

SALE OF TRUST ESTATE.

1 SECTION 15. If the sale and conveyance, transfer or exchange
2 of any real or personal property held in trust or the partition of any
3 such real property held in common and undivided appears to be
4 necessary or expedient, the supreme judicial court, the superior court
5 or the probate court may, upon petition of a trustee or other person
6 interested, after notice and other proceedings as hereinafter required,
7 order such sale and conveyance, transfer, exchange or partition to
8 be made, and the investment, reinvestment and application of the
9 proceeds of such sale in such manner as will best effect the objects
10 of the trust.

Order for sale of estate held in trust, how obtained.
1820, 54, § 3.
R. S. 69, § 11.
1846, 242.
G. S. 100, §§ 14, 16.
1864, 168, § 1.
1869, 331.
P. S. 141, § 20.
11 Gray, 405.
14 Allen, 24.
103 Mass. 59.
109 Mass. 1.

119 Mass. 1, 52. 125 Mass. 138. 168 Mass. 576.

1 SECTION 16. If the court, upon proceedings under the provi-
2 sions of the preceding section, finds that the estate which is the sub-
3 ject of the petition may be held in trust for, or that a remainder
4 or contingent interest therein may be limited over to, persons not
5 ascertained or not in being, notice shall be given in such manner
6 as the court may order to all persons who are or may become in-

Proceedings on petition for such sale.
1863, 25.
1864, 168, § 2.
P. S. 141, § 21.
146 Mass. 100.

interested in such estate, and to all persons whose issue, not then in being, may become so interested; and the court shall of its own motion in every such case appoint a suitable person to appear and act therein as the next friend of all persons not ascertained or not in being, who are or may become interested in such estate, and the provisions of sections twenty-three and twenty-four of chapter one hundred and forty-five which are not inconsistent herewith shall apply to such appointment. A conveyance or transfer made after such notice and proceeding shall be conclusive upon all persons for whom such guardian ad litem or next friend was appointed.

Property held in trust by minors, etc., may be sold and conveyed in certain cases.
1845, 64.
G. S. 100, § 15.
1869, 331.
P. S. 141, § 22.
116 Mass. 377.
163 Mass. 503.

SECTION 17. If a person who is seised or possessed of real or personal property or of an interest therein upon a trust, express or implied, is under the age of twenty-one years, insane, out of the commonwealth or not amenable to the process of any court therein which has equity powers, and in the opinion of the supreme judicial court, the superior court or the probate court it is fit that a sale should be made of such property or of an interest therein, or that a conveyance or transfer should be made thereof in order to carry into effect the objects of the trust, the court may order such sale, conveyance or transfer to be made and may appoint a suitable person in the place of such trustee to sell, convey or transfer the same in such manner as it may require. If a person so seised or possessed of an estate or entitled thereto upon a trust is within the jurisdiction of the court, he or his guardian may be ordered to make such conveyances as the court orders.

MORTGAGE OF TRUST ESTATE.

Trustees may be authorized to mortgage, etc.
1869, 451, § 1.
1872, 370, § 1.
1876, 199, § 1.
P. S. 141, § 23.
1889, 66.

SECTION 18. The court which has jurisdiction of a trust created by a written instrument may, upon petition and after notice to all persons interested, if upon a hearing it appears to be for the benefit of the trust estate, authorize trustees to mortgage any real property held by them in trust for the purpose of paying assessments upon their trust estate for betterments or for the expense of repairs and improvements on such estate made necessary by such betterments or by the lawful taking of such estate or of a part thereof by a city or town; for the purpose of paying the expense of erecting, altering, completing, repairing or improving a building on such estate; or for the purpose of paying the expense of other improvements of a permanent nature made or to be made upon such estate; or for the purpose of paying an existing lien or mortgage on such trust estate or on a part thereof; or it may authorize such trustees to make an agreement for the extension or renewal of such existing mortgage.

Form of petition and decree.
1872, 370, §§ 1, 2.
1876, 199, § 2.
P. S. 141, § 24.

SECTION 19. Such petition shall set forth a description of the estate to be mortgaged, the amount of money necessary to be raised and the purposes for which such money is required, and, if made to a probate court, shall be made in the county in which the trustees were appointed, if the trust was created by will, or, if it was not so created, then in the county in which the estate or a part of the estate which is the subject of the petition is situated. The decree of the court upon such petition shall fix the amount for which the mortgage may be given and the rate of interest which may

10 be paid thereon, and may order the interest and the whole or any
 11 part of the money secured by the mortgage to be paid from time to
 12 time out of the income of the property mortgaged.

DISTRIBUTION OF TRUST ESTATE.

1 SECTION 20. If, by the provisions of a written instrument, a trust
 2 estate is to be distributed in whole or in part, the probate court
 3 may, upon the petition of a person interested, after such notice
 4 as it may direct, order the trustee to convert the said estate, both
 5 real and personal, or either, into cash and to distribute it among
 6 such persons as, according to such instrument, are entitled thereto.

Distribution of
 trust estate.
 1898, c. 65, § 1.
 175 Mass. 239.

TRUSTS FOR THE BENEFIT OF CREDITORS.

1 SECTION 21. If a debtor who resides in this commonwealth has
 2 made an assignment to a trustee for the benefit of his creditors, the
 3 acts of the trustee thereunder in protecting and caring for the prop-
 4 erty and converting it into money, if done in good faith and with
 5 reasonable judgment and discretion, shall, subject to the provisions
 6 of the following section, be valid notwithstanding subsequent pro-
 7 ceedings in insolvency by or against the debtor, and the assignee in
 8 insolvency shall, if such assignment is avoided by him, recover the
 9 net amount of money received for, or the price of, the property
 10 sold and converted by such trustee instead of the property itself.

Protection of
 trustees.
 1887, § 40, § 1.

1 SECTION 22. The provisions of the preceding section shall not
 2 apply to the acts of such trustee unless the assignment conveys all
 3 the property and estate of the debtor wherever situated, either
 4 within or without this commonwealth, not exempt from attachment
 5 by the laws of this commonwealth, and provides for its distribution
 6 in substantial conformity with the provisions of chapter one hun-
 7 dred and sixty-three; nor unless a majority in number and value
 8 of the creditors, whose claims are neither secured nor preferred by
 9 said chapter, have assented in writing to the assignment: nor un-
 10 less the trustee, before proceeding to act and immediately on the
 11 acceptance of his trust, gives notice in writing by mail or otherwise
 12 to all known creditors of the debtor of such assignment and his
 13 acceptance thereof, and deposits with the clerk of the city or town
 14 in which the principal business of the debtor is carried on a copy
 15 of such assignment, which shall be filed and indexed by said clerk
 16 upon receiving a fee of one dollar therefor.

Conditions
 thereof.
 1887, § 40, §§ 1, 2.
 1897, § 26.

1 SECTION 23. If, upon petition or otherwise, the probate court
 2 of the county in which letters testamentary or of administration
 3 have been granted on the estate of a person deceased, finds that such
 4 person in his lifetime made a conveyance of real property in this
 5 commonwealth in trust for the benefit of his creditors, and the
 6 trustee certifies that all the debts secured by such conveyance and
 7 due to persons other than himself have been paid or otherwise
 8 adjusted to the satisfaction of the creditors so far as known and
 9 that he desires to settle his trust account and to terminate the trust,
 10 the court shall appoint a time and place for hearing all persons
 11 interested in such trust, of which notice shall be given by adver-

Termination
 of trusts for
 benefit of
 creditors cre-
 ated by per-
 sons deceased.
 1850, c. 241, §§ 1, 3.
 G. S. 100, §§ 17,
 18.
 P. S. 141, §§ 25,
 26.

tisement in a newspaper published in the county, or otherwise, 12
as the court orders. Upon such hearing the court may terminate 13
the trust so far as the creditors and persons claiming under them 14
are concerned, may discharge such real property from the trust, 15
may settle the trust account, and make any further order as to the 16
disposition, distribution or partition of the remaining trust estate, 17
not inconsistent with the provisions of the original instrument 18
creating the trust. The provisions of this section shall not apply 19
to any case in which the instrument creating the trust does not 20
bear date more than six years previous to the time appointed for 21
the hearing; nor shall they affect the operation of the insolvent 22
laws of this commonwealth. 23

CHAPTER 148.

PROVISIONS RELATIVE TO SALES, MORTGAGES, ETC., BY EXECUTORS, ETC.

SECTIONS 1-12.—General Provisions.

SECTIONS 13-18.—Compromises, etc.

SECTIONS 19-26.—Irregular and Invalid Sales, etc.,
by Executors, etc.

GENERAL PROVISIONS.

Executor, etc.,
to convey real
property,
which testator,
etc., had
agreed to con-
vey.
C. L. 296, § 3.
1783, 32, § 4.
R. S. 74, §§ 8-13.
1855, 374.
1859, 36.
G. S. 117, §§ 5, 6.
P. S. 142, § 1.
1883, 223.
8 Gray, 542.
108 Mass. 552.
119 Mass. 482.

SECTION 1. If a person who has entered into a written agree- 1
ment for the conveyance of real property dies or is put under guar- 2
dianship before making such conveyance, the probate court shall 3
have jurisdiction concurrent with the supreme judicial court and 4
the superior court to enforce a specific performance of such agree- 5
ment, and, upon a petition therefor by any person interested in 6
the conveyance, shall, after notice, if upon the hearing it appears 7
that the deceased, were he living or the ward, were he not under 8
guardianship, would be required to make the conveyance, order the 9
executor or administrator or the guardian to make the same, which 10
conveyance shall have like force and effect as if made by the person 11
who agreed to convey. 12

Sale of real
property de-
pendent upon
consent of
a deceased
person.
1871, 329.
P. S. 142, § 2.

SECTION 2. If, under the provisions of a will, the sale of real 1
property by a trustee or executor is dependent upon the consent of 2
a person who has deceased, the probate court having jurisdiction of 3
the settlement of the estate may, in its discretion and if all parties 4
interested assent, authorize the sale and conveyance of such real 5
property in like manner as if no such consent had been required. 6

License to
foreign exec-
utor, etc., to
receive and
dispose of per-
sonal property.
1880, 220.
P. S. 142, § 3.

SECTION 3. An executor, administrator, guardian or trustee duly 1
appointed in another state or in a foreign country and duly qualified 2
and acting, who may be entitled to any personal property, situated 3
in this commonwealth, may file an authenticated copy of his ap- 4
pointment in the probate court for any county in which there is 5
real property of his trust or, if there is no such real property, in 6
any county in which there is personal property of his trust, and 7
may upon petition to said court, after such notice to the treasurer 8

9 and receiver general, creditors and all persons interested as the
10 court may order, be licensed to receive or to sell by public or
11 private sale, upon such terms and to such person or persons as
12 he shall think fit, or otherwise to dispose of, and to transfer and
13 convey, shares in a corporation or other personal property, if the
14 court finds that there is no executor, administrator, guardian or
15 trustee appointed in this commonwealth who is authorized so to re-
16 ceive and dispose of such shares or estate, and that such foreign ex-
17 ceutor, administrator, guardian or trustee will be liable, upon and
18 after such receipt or sale, to account for such shares or estate, or
19 for the proceeds thereof, in the state or country in which he was
20 appointed: and that no person resident in this commonwealth and
21 interested as a creditor or otherwise objects to the granting of such
22 license or appears to be prejudiced thereby; but no such license
23 shall be granted to a foreign executor or administrator until the ex-
24 piration of six months after the death of his testator or intestate.

1 SECTION 4. An executor, administrator, guardian or trustee
2 may, after the notice required upon a petition by him for a license
3 to sell real property, be authorized by the probate court to release
4 and discharge, upon such terms and conditions as may appear to be
5 proper, a vested, contingent or possible right or interest, if such
6 release or discharge appears to be for the benefit of the persons or
7 estates which he represents.

Vested or con-
tingent in-
terests, how
released by
executor, etc.
1855, 307, § 2.
G. S. 101, § 11.
1863, 230.
P. S. 142, § 4.

1 SECTION 5. An executor, administrator, guardian or trustee
2 may be authorized by the probate court, after notice to all persons
3 interested or upon their assent thereto, to sell and convey or release,
4 upon such terms and in such manner as said courts may order, lots
5 in cemeteries which belong to the persons or estates by them
6 represented.

Sale or release
of lots in
cemeteries.
1869, 35.
P. S. 142, § 5.

1 SECTION 6. A mortgage which is given by an executor, ad-
2 ministrator, guardian or trustee, by license of court, may contain a
3 power of sale, and every such mortgage shall state that it is made
4 under license of court and the date of such license.

Power of sale
mortgages
may be given
by executor,
etc., by license
of court.
1864, 212, § 4.

1869, 219, § 2; 451, § 2. 1872, 370, § 3. 1876, 79, §§ 3, 4; P. S. 142, § 6.
1871, 282, § 3. 1873, 280, § 2. 190, § 3. 11 Gray, 492.

1 SECTION 7. All proceedings in probate courts relative to sales
2 by a foreign executor, administrator, guardian or trustee shall be in
3 the county in which an authenticated copy of his appointment is first
4 filed.

R. S. 71, § 25; 72, § 16. G. S. 102, § 42. P. S. 142, § 7.

Petitions for
sales by
foreign exec-
utor, etc.,
brought,
where.
1817, 182, § 1.

1 SECTION 8. No license for a sale by an executor, administrator,
2 guardian or trustee shall be in force for more than one year after the
3 granting thereof, except as provided in section seventeen of chapter
4 one hundred and forty-six.

G. S. 102, § 43. P. S. 142, § 8.

License for
sale to remain
in force for
one year.
1817, 190, § 12.
R. S. 71, § 19;
72, § 13.

1 SECTION 9. In every sale of the real property of a deceased
2 person or of a ward by an executor, administrator or guardian, the
3 surplus of the proceeds remaining on the final settlement of the
4 accounts shall be considered as real property and shall be disposed
5 of to the same persons and in the same proportions to whom and
6 in which the real property if not sold would have descended or
7 have been disposed of by the laws of this commonwealth.

Surplus of pro-
ceeds of sales
to be treated
as real prop-
erty.
R. S. 71, § 34;
72, §§ 5, 17.
G. S. 102, § 44.
P. S. 142, § 9.

Costs in case
of objection to
the granting of
a license.
1783, 32, § 6.
R. S. 71, § 36;
72, § 18.

SECTION 10. If a person appears and objects to the granting of a license to sell real property and the court finds that either the petition or the objection thereto is unreasonable, it may award costs to the prevailing party.

G. S. 102, § 45.

P. S. 142, § 10.

Examination
of persons
licensed to sell
land.
R. S. 71, § 39;
72, § 21.
1857, 71, § 1.
G. S. 102, § 43.
P. S. 142, § 11.

SECTION 11. A person who is authorized to make sale of land by license of court shall be required, upon petition to the probate court by an heir, creditor, ward or other person interested in the estate, to make answer upon oath as to all matters relative to his exercise and fulfilment of said license, as fully as he is liable to account and be examined relative to personal property. If, in relation to the exercise of such license or to a sale under it, there is any neglect or misconduct in the proceedings of such person by which a person interested in the estate suffers damage, such interested person may recover compensation therefor on the probate bond or otherwise as the case may require.

Sale of prop-
erty held for
churches, etc.
1897, 462.

SECTION 12. The supreme judicial court, upon petition of a party interested and after notice, may order the sale or transfer of any real or personal property which is held for churches, cemeteries or other like trusts and the investment or disposition of the proceeds, and may make orders and decrees necessary to secure the rights of owners of, or of other persons claiming an interest in, pews or in tombs or lots in cemeteries.

COMPROMISES, ETC.

Compromises
by executor,
etc., under au-
thority of pro-
bate court.
1817, 190, § 21.
1826, 136.

SECTION 13. The probate court may authorize an executor, administrator, guardian or trustee to adjust by arbitration or compromise any demand in favor of or against the estate by him represented.

1835, 93.
1838, 92.

R. S. 65, § 10; 79, § 17.
1855, 37, 432.

G. S. 101, § 10.
P. S. 142, § 12.

9 Allen, 173.
137 Mass. 94.

Executor,
etc., may, un-
der authority
of supreme
court, compro-
mise, etc.,
controversies
between claim-
ants to estate.
1861, 174, § 1.
P. S. 142, § 13.
170 Mass. 330.

SECTION 14. The supreme judicial court may authorize an executor, administrator, guardian or trustee to adjust by arbitration or compromise any controversy that may arise between different claimants to the estate in his hands, to which arbitration or compromise such executor, administrator, guardian or trustee, and all other parties in being who claim an interest in such estate, shall be parties. An award or compromise made in writing in such case shall, if found by the court to be just and reasonable in its effects upon any future contingent interests in said estate, be valid and binding upon such interests as well as upon the interests of parties in being; and if the court finds that such future contingent interests may be affected, it may appoint some person or persons to represent such interests in such controversy, upon such conditions as to costs as it may order.

Arbitration of
controversies
as to wills.
1864, 173, § 1.
P. S. 142, § 14.
1889, 266.

SECTION 15. The supreme judicial court shall have jurisdiction in equity to authorize the persons named as executors in an instrument purporting to be the last will of a person deceased, or the administrators with such will annexed, to adjust by arbitration or compromise any controversy between the persons who claim as devisees or legatees under such will and the persons entitled to the

5
3 c 222
072.447

180 Mass. 303
181 " 506
211 " 288

7 estate of the deceased under the statutes regulating the descent and
8 distribution of intestate estates, to which arbitration or compromise
9 the persons named as executors, or the administrators with the will
10 annexed, as the case may be, those claiming as devisees or legatees
11 whose interests will in the opinion of the court be affected by the
12 proposed arbitration or compromise, and those claiming the estate as
13 intestate, shall be parties.

1 SECTION 16. If the court finds that any future contingent inter-
2 ests, which would arise under said will if admitted to probate,
3 would be affected by the arbitration or compromise, it shall ap-
4 point some person or persons to represent such interests in such
5 controversy, and the court shall have like power as to any bequests
6 made in the will for charitable purposes, if no trustees have been
7 appointed in such will; in both cases with such conditions as to
8 costs as the court orders.

Contingent in-
terests, how
protected in
such contro-
versies.
1864, 173, § 2.
P. S. 142, § 15.

1 SECTION 17. An award or compromise made in writing in any
2 such case shall, if found by the court to be just and reasonable in
3 relation to the parties in being and in its effect upon any future con-
4 tingent interests that might arise under such will and upon any be-
5 quests to charities made in the same, be valid and binding upon such
6 interests and upon such bequests, as well as upon the interests of all
7 persons in being, but it shall not impair the claims of creditors.

Effect of com-
promise, etc.
1864, 173, §§ 3, 4.
P. S. 142, § 16.
128 Mass. 203.

1 SECTION 18. If a minor or a person under guardianship is a
2 necessary party to an arbitration or compromise under the provi-
3 sions of section fifteen, he shall be represented in the proceedings
4 by his guardian, or by a guardian ad litem appointed by the court,
5 who shall in the name and in behalf of the party he represents make
6 and receive all proper conveyances and payments necessary to carry
7 into effect any award or compromise sanctioned by the court.

Minor, etc., to
be represented
by guardian,
etc.
1865, 186.
P. S. 142, § 17.

IRREGULAR AND INVALID SALES, ETC., BY EXECUTORS, ETC.

1 SECTION 19. No sale of real property made by an executor, ad-
2 ministrator, guardian, trustee or other person by license of court,
3 and no title under such sale, shall be avoided for the reason that the
4 deed was not delivered within one year after the license, or on
5 account of any irregularity in the proceedings, if it appears,

6 First, That the license was granted by a court of competent juris-
7 diction;

8 Second, That the person licensed gave a bond which was approved
9 by the judge of the probate court, if a bond was required upon the
10 granting of the license;

11 Third, That the notice of the time and place of sale was given
12 according to the order of the court; and,

13 Fourth, That the property was sold by public auction in accord-
14 ance with the notice, and is held by one who purchased it in good
15 faith.

Irregular, etc.,
sales of real
property by
executor, etc.,
effect of.
R. S. 71, § 38;
72, § 20.
1840, 97.
G. S. 102, § 47.
1860, 60.
1864, 137.
P. S. 142, § 18.
15 Mass. 326.
9 Pick. 285.
8 Met. 355.
2 Cnsh. 184.
9 Gray, 141.
3 Allen, 25.
13 Allen, 417.
102 Mass. 14.
105 Mass. 33.
106 Mass. 347.
115 Mass. 50,
511.
146 Mass. 100.

153 Mass. 325.

161 Mass. 315.

1 SECTION 20. If the validity of a sale is drawn in question by a
2 person who claims adversely to the title of the deceased or of the
3 ward, or who claims under a title which is not derived from or

Validity of
sale not to be
contested,
unless.

R. S. 71, § 40;
72, § 22.
G. S. 102, § 48.
P. S. 142, § 19.

through the deceased or the ward, the sale shall not be void by reason of any irregularity in the proceedings, if the executor, administrator, guardian or trustee was licensed to make the sale by a court of competent jurisdiction and executed and acknowledged in legal form a deed for the conveyance of the property.

Adjudication
as to debts
final, when.
1874, 346, § 2.
P. S. 142, § 20.

SECTION 21. If a license is granted by a probate court for a sale or mortgage of real property to pay the debts and charges of a deceased person or of a person under guardianship, the adjudication of said court as to the existence of such debts and charges shall be final, so far as the same may affect any title acquired by virtue of such license, but shall not affect the right of the executor, administrator or guardian to contest the validity of such debts and charges.

Action or entry
for recovery of
land sold by
executor, etc.
1817, 190, § 12.
R. S. 71, § 37;
72, § 19.
G. S. 102, § 46.
P. S. 142, § 21.
9 Cnsh. 223.
10 Gray, 31.

SECTION 22. No action for the recovery of property sold by an executor or administrator under the provisions of chapter one hundred and forty-six shall be maintained by an heir or other person who claims under the deceased, unless it is commenced within five years next after the sale; and no action for property sold by a guardian under the provisions of said chapter shall be maintained by the ward or by any person who claims under him, unless it is commenced within five years next after the termination of the guardianship: except that persons out of this commonwealth and minors and others under legal disability to sue when their right of action first accrues, may commence such action at any time within five years after the removal of the disability, or after their return to the commonwealth. No entry, unless by judgment of law, shall be made upon land so sold, with a view to avoid the sale, unless within the times of limitation before prescribed for the commencement of an action.

Confirmation,
etc., of void
acts of exec-
utor, etc.
1873, 253, § 3.
P. S. 142, § 22.
142 Mass. 479.
150 Mass. 381.

SECTION 23. If an act or proceeding of a person acting as executor, administrator, guardian or trustee under an appointment or license of a probate court is void or voidable by reason of an irregularity or of want of jurisdiction or authority in the court which made the appointment or granted the license, any person interested in or affected by such act or proceeding may have the matter heard and determined by the supreme judicial court in equity, which may confirm or set aside, in whole or in part, the act or proceeding.

Ratification of
doubtful acts
of executor,
etc.
1874, 346, § 1.
P. S. 142, § 23.
1888, 420.

SECTION 24. If the authority or validity of an act or proceeding of the probate court or of a person acting as executor, administrator, guardian or trustee is drawn in question by reason of an alleged irregularity, defective notice or want of authority, any party interested in or affected by such act or proceeding may apply to the probate court which has jurisdiction of the subject-matter relative to which the act or proceeding has been had, and the court, after notice to all parties interested, and to the persons who may be the parents of such parties not in being, with power to appoint a guardian or next friend to represent the interests of any person unborn or unascertained, may hear and determine the matter and confirm the act or proceeding, in whole

13 or in part, and may authorize and empower the executor, admin-
 14 istrator, guardian or trustee, or any successor or other person
 15 who may be legally appointed to act in the same capacity, to ratify
 16 and confirm such act or proceeding and to execute and deliver
 17 such deeds, releases, conveyances and other instruments as may be
 18 found necessary for that purpose ; but no act or proceeding shall be
 19 ratified or confirmed which the court might not have passed or au-
 20 thorized in the first instance upon due proceedings.

1 SECTION 25. An executor, administrator, guardian or trustee
 2 whose appointment is invalid by reason of an irregularity or of want
 3 of jurisdiction or authority in the court which made it, shall account
 4 for all money, property or assets which have come to his hands as
 5 such executor, administrator, guardian or trustee, or by reason of
 6 such appointment, as if the appointment had been regular and valid ;
 7 and any bond given in pursuance of such appointment shall be valid
 8 and binding on the principals and sureties, and payments to or by
 9 a person so appointed, if in other respects properly made, may with
 10 the approval of the probate court be ratified and confirmed by the
 11 executor, administrator, guardian or trustee who is afterward legally
 12 appointed.

Liability of
 irregularly
 appointed ex-
 ecutor, etc., to
 account.
 1873, 253, §§ 1, 2.
 P. S. 142, § 24.
 126 Mass. 105.

1 SECTION 26. If an executor, administrator, guardian or trustee,
 2 or a person employed by him to give notice of an appointment or
 3 notice of sale of real property, has failed to file an affidavit of such
 4 notice in the probate court and such affidavit cannot be obtained,
 5 the probate court may, upon petition of any person interested in
 6 real property the title to which may be affected thereby, stating the
 7 particular failure complained of and averring that the affidavit can-
 8 not be obtained, order notice by publication to creditors of, and
 9 others interested in, the estate in the settlement of which the failure
 10 complained of occurred. If, upon return of such notice and after a
 11 hearing, the court is satisfied that such notice was in fact given, it
 12 may make a decree that such notice was in fact given.

Failure of
 proof of notice
 of appoint-
 ment or sale,
 how remedied.
 1889, 315.

CHAPTER 149.

OF BONDS OF EXECUTORS, ADMINISTRATORS, GUARDIANS AND TRUSTEES.

- SECTIONS 1, 2. — Form and Conditions of Probate Bonds.
 SECTIONS 3-5. — Exemption from Giving Sureties on Bonds.
 SECTION 6. — Exemption from Giving Bond.
 SECTIONS 7, 8. — Effect of Neglect to give Bond.
 SECTIONS 9-19. — General Provisions.
 SECTIONS 20-35. — Remedy upon Bonds.

FORM AND CONDITIONS OF PROBATE BONDS.

1 SECTION 1. An executor, administrator, administrator with the
 2 will annexed, special administrator, receiver of an absentee, tem-
 3 porary guardian and, unless otherwise expressly provided, a guar-
 4 dian or trustee under a will or appointed by the probate court,

Bonds of exec-
 utor, etc.
 P. S. 129, § 5 ;
 130, §§ 2, 8, 11 ;
 139, § 22 ; 141,
 §§ 12, 13.

1897, 135, § 3; 447, § 2.
1900, 345, § 4.

Conditions of bond of executor.

1783, 24, § 17.
1816, 94, § 1.
1817, 140, § 14.
R. S. 63, §§ 2, 8.
G. S. 93, §§ 2, 8.
1870, 285.
1878, 154, § 1.
1880, 152, § 1.
P. S. 129, § 5;
130, § 8.
13 Pick. 328.
7 Cush. 207.
10 Cush. 1.
5 Gray, 342.
14 Gray, 114.
8 Allen, 532.
106 Mass. 15.

—of administrator.

1692-3, 14, § 1.
1783, 36, § 8.
1816, 94, § 1.
1817, 130, § 14.
R. S. 64, § 5.
G. S. 94, § 2.
1878, 154, § 1.
1880, 152, § 1.
P. S. 130, § 2.
126 Mass. 450.
134 Mass. 120.
136 Mass. 297.

133 Mass. 111.
136 Mass. 54.
151 Mass. 596.

—of special administrator.

1834, 174, § 5.
R. S. 64, § 7.
G. S. 94, § 7.
1876, 200, § 2.
P. S. 130, § 11.

—of receiver of absentee.

1897, 447, § 2.

—of temporary guardian.

1897, 135, § 3.
1900, 345, § 4.

before entering upon the duties of his trust, shall give bond with sufficient sureties, in such sum as the probate court may order, payable to the judge of said court and his successors, and with condition substantially as follows:—

1. In the case of an executor or administrator with the will annexed:

First, To make and return to the probate court within three months a true inventory of all the testator's real and personal property which at the time of making such inventory shall have come to his possession or knowledge;

152 Mass. 412.

Second, To administer according to law and to the will of the testator all personal property of the testator which may come into his possession or into the possession of any person for him, and also the proceeds of any of the real property of the testator which may be sold or mortgaged by him;

140 Mass. 351.

143 Mass. 326.

Third, To render upon oath a true account of his administration at least once a year until his trust is fulfilled, unless he is excused therefrom in any year by the court, and also to render such account at such other times as the court may order.

2. In the case of an administrator:

First, To make and return to the probate court within three months a true inventory of all the intestate's real and personal property which at the time of making such inventory shall have come to his possession or knowledge;

Second, To administer according to law all the personal property of the deceased which may come into his possession or into the possession of any person for him, and also the proceeds of any of the real property of the deceased which may be sold or mortgaged by him;

Third, To render upon oath a true account of his administration at least once a year until his trust is fulfilled, unless he is excused therefrom in any year by the court, and also to render such account at such other times as the court orders;

Fourth, To pay to such persons as the court orders any balance remaining in his hands upon the settlement of his accounts;

Fifth, To deliver his letters of administration into the court if a will of the deceased is thereafter duly proved and allowed.

3. In the case of a special administrator:

That he will make and return to the probate court within such time as it orders a true inventory of all the personal property of the deceased which at the time of making such inventory shall have come to his possession or knowledge, and that he will, whenever required by the probate court, truly account on oath for all the property of the deceased which may be received by him as such special administrator, and will deliver the same to any person who may be appointed executor or administrator of the deceased, or may be otherwise lawfully authorized to receive the same.

4. In the case of a receiver of an absentee appointed under the provisions of chapter one hundred and forty-four:

With condition substantially as provided for the bond of an executor or administrator, and with the further condition to obey all orders and decrees made by the probate court.

5. In the case of a temporary guardian appointed under the provisions of section twenty of chapter one hundred and forty-five:

59 That he will make and return to the probate court within such
60 time as it shall order a true inventory of all the personal property
61 of the ward which at the time of making such inventory shall have
62 come to his possession or knowledge, and that he will, whenever
63 required by the probate court, truly account on oath for all the
64 property of the ward which may be received by him as such tem-
65 porary guardian, and will deliver it to any person who may be
66 appointed guardian or may be otherwise lawfully authorized to
67 receive it.

68 6. In the case of a guardian :

69 First, To make and return to the probate court at such time as it
70 orders a true inventory of all the real and personal property of the
71 ward which at the time of making such inventory shall have come
72 to his possession or knowledge ;

73 Second, To manage and dispose of all such property according to
74 law and for the best interests of the ward, and faithfully to perform
75 his trust in relation to such property and to the custody, education
76 and maintenance of the ward ;

77 Third, To render upon oath at least once a year until his trust is
78 fulfilled, unless he is excused therefrom in any year by the court, a
79 true account of the property in his hands, including the proceeds of
80 all real property sold or mortgaged by him and of the management
81 and disposition thereof, and also to render such account at such
82 other times as said court may order : and

83 Fourth, At the expiration of his trust to settle his account in the
84 probate court or with the ward or his legal representatives, and to
85 pay over and deliver all the property remaining in his hands or due
86 from him on such settlement, to the person or persons lawfully
87 entitled thereto.

88 7. In the case of a trustee under a will or appointed by the pro-
89 bate court :

90 First, To make and return to the probate court at such time as it
91 orders a true inventory of all the real and personal property belong-
92 ing to him as trustee which at the time of the making of such in-
93 ventory shall have come to his possession or knowledge ;

94 Second, To manage and dispose of all such property, and faith-
95 fully to perform his trust relative thereto according to law and to
96 the will of the testator :

97 Third, To render upon oath at least once a year until his trust is
98 fulfilled, unless he is excused therefrom in any year by the court, a
99 true account of the property in his hands and of the management
100 and disposition thereof, and also to render such account at such
101 other times as said court orders : and

102 Fourth, At the expiration of his trust to settle his account in the
103 probate court, and to pay over and deliver all the property remain-
104 ing in his hands, or due from him on such settlement, to the person
105 or persons entitled thereto.

Conditions of
bond of
guardian.
1726-7, 12, §§ 6,
7.
1731-2, 14, §§ 6,
7.
1737-8, 9, §§ 3, 4.
1783, 38, § 5.
1817, 190, § 34.
R. S. 79, §§ 5, 7.
1855, 280.
G. S. 109, §§ 6,
16.
1878, 154, § 2.
1880, 152, § 1.
P. S. 139, § 22.
4 Mass. 106.
1 Pick. 198, 206.
7 Pick. 91.
8 Pick. 528.
18 Pick. 1.
21 Pick. 36.
4 Cush. 510.
11 Cush. 20.
9 Gray, 84.
14 Gray, 114.
9 Allen, 102.
109 Mass. 252.
130 Mass. 141.
144 Mass. 195.
154 Mass. 269.
155 Mass. 263.

— of trustee.
1810, 86, § 1.
1817, 190, §§ 37,
41.
R. S. 69, §§ 1, 9.
G. S. 109, §§ 1,
11.
1869, 337.
1878, 154, § 2.
P. S. 141, §§ 12,
13.
22 Pick. 215.
10 Allen, 169.
153 Mass. 249.

1 SECTION 2. If the executor of a will or an administrator with
2 the will annexed is residuary legatee thereunder, and it appears
3 that the bond required of him in the preceding section is not neces-
4 sary for the protection of any person interested in the estate, the
5 court may permit such executor or administrator with the will
6 annexed, instead of giving such bond, to give bond in a sum and

Bond of execu-
tor who is
residuary
legatee.
1783, 24, § 17.
R. S. 63, §§ 3, 4.
1857, 88.
G. S. 93, §§ 3, 4.
1870, 285.
P. S. 129, §§ 6, 7;
130, § 8.

3 Mass. 523.
16 Mass. 172.
5 Pick. 337.
5 Met. 247.
6 Cush. 235.
2 Gray, 404.
5 Gray, 67.
133 Mass. 447.
134 Mass. 115.
140 Mass. 66,
502.

with sureties to the satisfaction of the court, and with condition to 7
pay all debts and legacies of the testator and such amounts as may be 8
allowed by the court to the widow or minor children for necessaries. 9
In such case he shall not be required to return an inventory. The 10
giving of such bond shall not discharge the lien on the real prop- 11
erty of the testator for the payment of his debts, except on such 12
part as may be sold by the executor or administrator with the will 13
annexed to a purchaser in good faith and for a valuable considera- 14
tion: and all property not so sold may be taken on execution by 15
a creditor not otherwise satisfied, in like manner as if a bond had 16
been given in the other form. 17

EXEMPTION FROM GIVING SURETIES ON BONDS.

Exemption of
executor, etc.,
from giving
sureties, when.
1858, 72.
G. S. 93, § 5.
P. S. 129, § 8.
1885, 274, § 1.
8 Allen, 532.
12 Allen, 330.

SECTION 3. An executor shall be exempt from giving a surety 1
on his bond if the testator has ordered or requested such exemption 2
or that no bond should be taken, and an executor, administrator 3
or an administrator with the will annexed, shall be so exempt if all 4
the persons interested in the estate who are of full age and legal 5
capacity, other than creditors, certify to the probate court their con- 6
sent thereto; but not until all creditors of the estate, and the guar- 7
dian of any minor interested therein, have been notified and have had 8
opportunity to show cause against the same. The probate court may 9
however upon or after the granting of letters testamentary or letters 10
of administration require bond, with sufficient surety or sureties. 11

— of guardians
and trustees.
1817, 190, § 37.
R. S. 69, § 2; 79,
§ 7.
G. S. 100, § 2;
109, § 6.
1869, 357.
1873, 122, § 1.
1874, 352, § 2.
1880, 34.
P. S. 139, §§ 23,
24; 141, §§ 16, 17.
1891, 339.
22 Pick. 215.
149 Mass. 92.

SECTION 4. A testamentary guardian and a trustee under a will 1
shall be exempt from giving surety or sureties on his bond, if 2
the testator has ordered or requested such exemption, or that no 3
bond should be required, or in the case of a trustee, if all the per- 4
sons beneficially interested in the trust, who are of full age and 5
legal capacity, other than creditors, request such exemption; but 6
not until the guardian of any minor interested therein and such 7
other persons as the court orders, have been notified and have had 8
opportunity to show cause against the same. The probate court 9
may however at any time require such guardian, trustee or trustee 10
appointed by the probate court to give a bond with surety or sureties. 11

Bond without
surety of guar-
dian having
custody of
ward.
1881, 237.
P. S. 139, § 25.

SECTION 5. If the custody of a minor is given to a guardian, 1
pursuant to the provisions of section four of chapter one hundred 2
and forty-five, for the reason that one or both of his parents are 3
unfit to have such custody, such guardian may in the discretion of 4
the court give a bond without a surety; but the court in such case 5
may, at any time if it finds that the protection of the ward's interests 6
renders it necessary, require such guardian to give a bond with 7
surety or sureties. 8

EXEMPTION FROM GIVING BOND.

Guardians and
trustees ex-
empt from
giving bond,
when.
1810, 86, § 1.
1817, 190, § 37.
R. S. 69, § 3.
G. S. 100, § 3.
1873, 122, § 2.

SECTION 6. A guardian or trustee who was not required to give 1
bond by the laws in force at the time of his appointment shall not 2
be required to give bond under the provisions of the preceding sec- 3
tions of this chapter, except by special order of the court under the 4
provisions of section four. 5

EFFECT OF NEGLECT TO GIVE BOND.

1 SECTION 7. A person required by the provisions of the preceed- Neglect to
2 ing sections to give a bond who, for thirty days after his appoint- resignation.
3 ment or after the entry of the decree requiring him to give bond, 1810, 86, § 2.
4 fails to file the bond, duly approved, may be found to have declined 1817, 190, § 38.
5 or resigned the trust. R. S. 69, § 4.
G. S. 100, § 4.
1869, 357. 1873, 122, § 2. 1880, 34, § 2.
P. S. 139, § 26; 141, § 18. 1898, 458. 110 Mass. 298.

1 SECTION 8. An executor, administrator or administrator with Same subject.
2 the will annexed who neglects to give bond, with surety or sureties, 1885, 274, § 2.
3 when required by the probate court within such time as it orders, in
4 accordance with the provisions of section three, shall be found to
5 have declined or resigned the trust.

GENERAL PROVISIONS.

1 SECTION 9. The sureties on every bond given to a judge of pro- Sureties on
2 bate shall, except as provided in section sixty-one of chapter one bonds to be
3 hundred and eighteen, be inhabitants of this commonwealth, and inhabitants of common-
4 satisfactory to such judge or to the register. 1817, 190, § 23. wealth.
R. S. 70, § 2. G. S. 101, § 12. P. S. 143, § 1. 1901, 463. 7 Allen, 425. 1782, 25, § 4.

1 SECTION 10. No bond required to be given to a judge of probate Bonds to be
2 or to be filed in a registry of probate shall be sufficient, unless it has approved by
3 been examined and approved by the judge or by the register, and judge or
4 his approval over his official signature written thereon. register of
R. S. 83, § 32. P. S. 143, § 2. 3 Cush. 465. 113 Mass. 472. probate.
G. S. 101, § 12. 1901, 463. 12 Allen, 330. 126 Mass. 105. 1817, 190, § 23.

1 SECTION 11. Two or more persons acting jointly as executors, Joint or sepa-
2 administrators, trustees or otherwise, who are required to give rate bonds by
3 bonds, may give either separate or joint bonds. joint execu-
R. S. 70, § 2. G. S. 101, § 14. 1874, 366. P. S. 143, § 3. tors, etc.
1834, 174, § 6.

1 SECTION 12. If two or more persons are appointed executors, Executor not
2 none shall intermeddle or act as such but those who give bond as giving bond
3 before provided. R. S. 63, § 2. G. S. 93, § 2. P. S. 129, § 9. not to inter-
1783, 24, § 17. meddle.

1 SECTION 13. If a license or authority for the sale or mortgage Special bond
2 of real property has been granted to an executor, administrator, not required of
3 guardian or trustee, no special bond shall be required; but if the executor, etc.,
4 court finds that the bond given by him upon his appointment is licensed to sell,
5 insufficient, it shall, before granting such license or authority, unless, etc.
6 require an additional bond containing the same conditions as are 1783, 32, § 2.
7 required in the bond to be given upon the appointment of such 1834, 174, § 7.
8 executor, administrator, guardian or trustee. R. S. 71, § 6; 72,
G. S. 101, § 13; § 10.
1850, 196.
102, §§ 6, 28.

1880, 152, § 2. P. S. 143, § 4. 139 Mass. 358. 153 Mass. 329.

1 SECTION 14. If the sureties or the penal sum in a bond given New bond
2 to a judge of probate are insufficient, the supreme judicial court or when sureties,
3 the probate court may, after notice to the principal in such bond, etc., insuffi-
4 require a new bond with such surety or sureties and in such penal cient.
5 sum as the court orders. R. S. 70, § 27; 79, § 24. 1851, 31, § 1.
G. S. 101, § 15; 1877, 134. 3 Cush. 465. 142 Mass. 399.
109, § 27. P. S. 143, § 5. 116 Mass. 435. 171 Mass. 386.

Discharge of sureties.

1817, 190, § 42.
R. S. 70, § 28;
79, § 24.
1843, 56, § 1.
G. S. 101, § 16;
109, § 27.
P. S. 143, § 6.
139 Mass. 356.

SECTION 15. A surety on a bond given to a judge of probate may, upon his petition to the supreme judicial court or the probate court, be discharged from all further responsibility, if the court, after notice to all persons interested, finds such discharge reasonable and proper; and the principal shall thereupon give a new bond with such surety or sureties as the court orders.

Removal of trustee if new bond not given.

1817, 190, § 42.
R. S. 70, § 29.
1843, 56, § 2.
1851, 31, § 1.

SECTION 16. If, in the cases specified in the two preceding sections, the principal does not give such new bond within such time as is ordered by the court, he shall be removed from his trust, and another person appointed in his stead.

G. S. 101, § 17.

P. S. 143, § 7.

Sureties on prior bond liable until new bond approved.

1817, 190, § 42.
R. S. 70, § 30.

SECTION 17. If a new bond is required as above provided, the sureties on the prior bond shall be liable for all breaches of the condition thereof which are committed before the new bond is approved by the judge.

1843, 56, § 3.
G. S. 101, § 18.

P. S. 143, § 8.
116 Mass. 552.

130 Mass. 404.
132 Mass. 343.

142 Mass. 399.
171 Mass. 386.

Reduction of penal sum of bond.

1899, 278.

SECTION 18. If a surety company becomes surety on a bond given to a judge of probate, the court may, upon the petition of any party in interest and after notice, reduce the penal sum in which the principal and surety shall be liable for a violation thereafter of the conditions thereof.

Release of sureties by marriage of executrix.

1869, 409, § 2.
P. S. 143, § 9.

SECTION 19. In case of the marriage of a woman who is an executrix, administratrix, guardian or trustee, her sureties shall have the right, upon petition to the probate court in which her bond is filed, to be released from any further liability on such bond, beyond accounting for and paying over the money and property already in her hands by virtue of such trust; and if her sureties are so released, she shall be required to furnish a new bond to the satisfaction of said court, or shall be discharged from said trust.

REMEDY UPON BONDS.

Suit by creditor on bond of executor, etc.

1786, 55, § 2.
R. S. 70, § 3.
G. S. 101, § 19.
P. S. 143, § 10.
15 Mass. 6.
16 Mass. 524.
20 Pick. 53.
9 Met. 525.
2 Gray, 154.

SECTION 20. Bonds given by executors or administrators for the performance of their trust may be put in suit by a creditor of the deceased for his own benefit, when such creditor has recovered judgment for his debt against the executors or administrators and they have neglected upon demand made by him to pay the same or to show sufficient goods or estate of the deceased to be taken on execution for that purpose.

117 Mass. 222.

138 Mass. 336.

142 Mass. 227.

Same subject.

1786, 55, § 2.
R. S. 70, § 4.
G. S. 101, § 20.
P. S. 143, § 11.
21 Pick. 58.

SECTION 21. A creditor of an estate which has been represented insolvent may bring such action if the amount due to him has been ascertained by the decree of distribution, and the executor or administrator neglects upon demand to pay such amount.

Suit by next of kin.

1786, 55, § 2.
R. S. 70, § 5.
G. S. 101, § 21.
P. S. 143, § 12.
126 Mass. 450.

SECTION 22. Such action may be brought by a person who is next of kin to recover his share of the personal property after a decree of the probate court ascertaining the amount due to him, if the executor or administrator neglects upon demand to pay such amount.

144 Mass. 138.

1 SECTION 23. If the probate court, upon the representation of
2 any person interested in an estate, finds that the executor or
3 administrator has failed in any manner not specified in the three
4 preceding sections to perform the conditions of his bond, it
5 may authorize any creditor, next of kin, legatee or other person
6 aggrieved by such maladministration to bring an action on the
7 bond.

15 Gray, 57. 13 Allen, 109. 116 Mass. 518. 133 Mass. 447.
9 Allen, 244. 110 Mass. 195. 129 Mass. 75. 136 Mass. 104.

Suit by person
aggrieved by
maladminis-
tration of
executor, etc.
1786, 55, § 2.
R. S. 70, § 6.
G. S. 101, § 22.
P. S. 143, § 13.
9 Met. 525.
7 Cush. 467.
1 Gray, 305.
2 Gray, 175.

1 SECTION 24. If a judge of probate is obligor, either as prin-
2 cipal or as surety, in a bond given to a former judge of the court,
3 any action authorized by the provisions of this chapter may be
4 brought upon such bond in the name of the judge mentioned
5 therein or in the name of his executor or administrator, and the
6 register of probate for the county in which such bond was given
7 may authorize an action thereon in like manner and upon the same
8 conditions as may be done in other cases by the court.

— how brought
when the judge
is an obligor.
1838, 184.
G. S. 101, §§ 23,
24.
P. S. 113, § 14.

1 SECTION 25. The wife of a judge of probate may be a defendant
2 in an action upon a bond given to him or to his predecessor in such
3 office.

— against wife
of probate
judge.
1896, 208.

1 SECTION 26. In every action on a bond under the provisions of
2 sections twenty, twenty-one and twenty-two, the writ shall be in-
3 dorsed by the persons for whose benefit or at whose request the action
4 is brought or by their attorney, and the indorsers shall be liable for
5 the costs of suit, and execution therefor shall be issued against
6 them and not against the judge. If the action is brought for the
7 benefit of creditors or next of kin, there shall be a further indorse-
8 ment on the writ specifying that it is brought for the benefit of
9 such creditors or next of kin.

Indorsement of
writ.
1786, 55, § 2.
R. S. 70, § 7.
G. S. 101, § 25.
P. S. 143, § 15.
2 Mass. 149.
5 Pick. 61.
2 Allen, 537.

1 SECTION 27. If the principal in the bond is a resident of this
2 commonwealth at the commencement of the action, and is not made
3 a defendant therein or is not served with process, the court may, at
4 the request of any of the sureties, continue or postpone the action
5 so long as may be necessary to summon or bring in the principal as
6 provided in the following section.

Obligor may be
summoned,
when.
1788, 20, § 2.
R. S. 70, § 8.
G. S. 101, § 26.
P. S. 143, § 16.

1 SECTION 28. The sureties may take out a writ, in such form as
2 the court may prescribe, to arrest the principal or to attach his
3 goods or estate, and to summon him to appear and answer as de-
4 fendant in the original action. If, after being served with such
5 process fourteen days at least before the time appointed for him to
6 appear and answer to the action, he neglects so to do, and if judg-
7 ment is for the plaintiff, such judgment shall be rendered against the
8 principal obligor with the other defendants in the same manner as
9 if he had been originally a party to the action. An attachment or
10 bail on such process shall be liable to respond to the judgment in
11 like manner as if made or taken in the original action.

Same subject.
1788, 20, § 2.
R. S. 70, § 9.
G. S. 101, § 27.
P. S. 143, § 17.

1 SECTION 29. Bonds given by guardians or trustees may be put
2 in suit by order of the probate court for the benefit of any person
3 interested in the estate, and the proceedings in such actions shall be

Actions upon
bonds of guar-
dians or trus-
tees.
1786, 55.

1810, 86, § 3.
1817, 190, § 43.
R. S. 69, § 13;
79, § 25.

conducted in like manner as is provided relative to actions on 4
bonds given by executors or administrators. G. S. 100, § 12; 109, § 28. 5
P. S. 143, § 18. 19 Pick. 403. 21 Pick. 36. 140 Mass. 357.

Venue of
actions upon
bonds.
1786, 55, § 3.
1810, 86, § 3.

SECTION 30. An action on a bond payable to a judge of probate 1
shall be brought in the superior court held for the county in which 2
the bond was taken. 1817, 190, § 43. R. S. 69, § 13; 70, § 10; 79, § 25. 3
G. S. 100, § 12; 101, § 28; 109, § 28. P. S. 143, § 19. 1897, 131.

Form of execu-
tion in action
on bond.
1786, 55.
1816, 94, § 2.
R. S. 70, § 10.
G. S. 101, § 128.
P. S. 143, § 20.
16 Gray, 267.
107 Mass. 474.
110 Mass. 195.
116 Mass. 552.
155 Mass. 203.

SECTION 31. If the court finds that there has been a breach of 1
the condition of the bond of an executor or administrator, it shall, 2
upon a hearing in equity, award execution in the name of the plain- 3
tiff as follows:— 4

First, If the action is brought for the benefit of a creditor, execu- 5
tion shall be awarded for the use of the creditor for the amount due 6
to him upon the judgment which he has recovered, or upon the 7
decree of distribution in his favor. 8

Second, If the action is brought for the benefit of a person who 9
is next of kin, execution shall be awarded for the use of such per- 10
son for the amount due to him according to the decree of the probate 11
court. 12

Third, If the action is brought for a breach of the condition in 13
not accounting for the estate as required by law, execution shall be 14
awarded, without expressing that it is for the use of any person, for 15
the full value of all the estate of the deceased which has come to the 16
hands of the executor or administrator and for which he does not 17
satisfactorily account, and for all damages caused by his neglect or 18
maladministration. 19

Fourth, If the action is brought for any other breach of the con- 20
dition of the bond, execution shall be awarded for such amount and 21
for the use of such person or persons, or without expressing it to be 22
for the use of any particular person, as the court determines. 23

Fifth, If there are two or more persons for whose use execution 24
is to be awarded as provided in this section, a separate execution 25
shall be issued for the amount due to each of them. 26

Sixth, The execution shall include the costs of suit, as well as 27
the debt or damages; and if there is more than one execution, the 28
costs shall be divided between them as the court orders. 29

Proceedings if
execution is
awarded for
the use of a
particular
person.
1786, 55, § 1.
R. S. 70, § 10,
cl. 7.
G. S. 101, § 28,
cl. 7.

SECTION 32. If an execution which is awarded under the pro- 1
visions of the preceding section is expressed to be for the use of a 2
particular person, such person shall be considered as the judgment 3
creditor, and may cause the execution to be levied in his name and 4
for his benefit, as if the action had been brought and the judgment 5
recovered in his name. P. S. 143, § 21. 8 Cush. 289. 6

— If awarded
without ex-
pressing for
whose use.
R. S. 70, § 11.
G. S. 101, § 29.
P. S. 143, § 22.
9 Met. 525.

SECTION 33. If such execution is awarded without expressing 1
it to be for the use of any particular person, all money received 2
thereon shall be paid to the co-executor or co-administrator, if any, 3
or to the person who is then the rightful executor or administrator, 4
and shall be assets in his hands to be administered according to law. 5

Provision for
new breach
after execution
awarded.

SECTION 34. If, after execution has once been awarded in an 1
action upon a bond, the executor or administrator commits a new 2

3 breach of the condition of the bond, or if a creditor, next of kin,
 4 legatee or other person interested in the estate has a claim for further
 5 damages on account of any neglect or maladministration of the
 6 executor or administrator, a writ of scire facias on the original judg-
 7 ment may be sued out in like manner as is provided for the com-
 8 mencement of the original action; and the court shall thereupon
 9 award a new execution in like manner as might have been done in
 10 the original action.

R. S. 70, § 12.
 G. S. 101, § 30.
 P. S. 143, § 23.

1 SECTION 35. No action shall be maintained against the sureties
 2 on a bond given by a guardian, unless commenced within four years
 3 from the time of the discharge of the guardian; but if at the time
 4 of such discharge the person entitled to bring such action is out of
 5 this commonwealth, it may be commenced within four years after
 6 his return.

13 Gray, 561.

141 Mass. 507.

Limitation of
 actions against
 sureties on
 bonds.
 1835, 11, 113.
 R. S. 79, § 26.
 G. S. 109, § 29.
 P. S. 139, § 28.
 9 Cush. 69.

CHAPTER 150.

OF THE ACCOUNTS AND SETTLEMENTS OF EXECUTORS, ADMINISTRATORS, GUARDIANS, TRUSTEES AND RECEIVERS.

1 SECTION 1. An executor, administrator or guardian, or a trust-
 2 tee who is required by law to give bond to a judge of probate,
 3 shall render an account relative to the estate in his hands at least
 4 once a year and at such other times as shall be required by the
 5 court, until his trust is fulfilled; but the court may upon his applica-
 6 tion excuse him from rendering an account in any year, if satisfied
 7 that it is not necessary or expedient that it should be rendered.

When accounts
 shall be ren-
 dered.
 1752-3, 12, § 1.
 R. S. 67, § 7.
 G. S. 98, § 9.
 1877, 102.
 P. S. 144, § 1.
 6 Met. 553.
 144 Mass. 587.
 149 Mass. 528.

1 SECTION 2. Accounts rendered to the probate court by an execu-
 2 tor, administrator, trustee or guardian shall be for a period dis-
 3 tinctly stated therein, and shall consist of three schedules, of which
 4 the first shall show the amount of personal property according to
 5 the inventory, or, instead thereof, the amount of the balance of the
 6 previous account rendered, as the case may be, and all income and
 7 other property received and all gains from the sale of any property
 8 or otherwise; the second shall show payments, charges, losses and
 9 distributions, and the third shall show the investment of the balance
 10 of such account, if any, and changes of investment. A trustee
 11 shall state in his accounts the receipts of principal and income sep-
 12 arately and also the payments and charges on account of such prin-
 13 cipal and income separately.

Forms of ac-
 counts.
 1885, 210.
 146 Mass. 373.

1 SECTION 3. An executor, administrator, guardian or trustee may
 2 be examined on oath before the court upon any matters relative to
 3 his accounts.

P. S. 144, § 2.

Examination
 on oath.
 R. S. 67, § 7.
 G. S. 98, § 9.

1 SECTION 4. An executor, administrator, guardian or trustee
 2 shall account for the personal property at its appraised value, but
 3 he shall make no profit by the increase, nor sustain any loss by the
 4 decrease or destruction without his fault of any part thereof. If he
 5 sells any of the personal property for more than its appraised value,

Personal prop-
 erty to be
 accounted for
 at appraised
 value, except,
 etc.
 1817, 190, §§ 19,
 34.

R. S. 67, §§ 1, 2, he shall account for the excess; and if he sells any for less than its 6
 4; 79, § 20. appraised value, he shall be allowed for the loss, if the court finds 7
 G. S. 48, §§ 1, 2, that the sale was expedient and for the interest of all concerned; 8
 6; 109, § 17. and he shall not be accountable for a debt inventoried as due to 9
 P. S. 144, § 3. the estate, if the court finds that it remains uncollected without his 10
 fault. 11

Property for
 which account-
 ant chargeable.
 1817, 190, § 34.
 R. S. 67, § 5; 79,
 § 20.
 G. S. 98, § 7;
 109, § 17.
 P. S. 144, § 4.

SECTION 5. An executor, administrator, guardian or trustee shall 1
 be chargeable in his account with all the personal property of the 2
 deceased which comes to his hands and which is by law to be admin- 3
 istered, although not included in the inventory; also with all pro- 4
 ceeds of real property which is sold or mortgaged and with all 5
 interest, profit and income that come to his hands from the personal 6
 property of the deceased. 7

Income de-
 rived from real
 property to be
 accounted for.
 1789, 11, § 2.
 R. S. 67, § 6.
 G. S. 98, § 8.
 P. S. 144, § 5.
 1 Allen, 132.
 100 Mass. 218.
 125 Mass. 307,
 311.
 136 Mass. 297.
 145 Mass. 522.

SECTION 6. If the real property has been used or occupied by an 1
 executor or administrator, he shall account for the income thereof as 2
 ordered by the probate court with the assent of the executor or ad- 3
 ministrator and of such other parties interested as appear upon the 4
 filing of the account. If the parties do not agree on the amount to 5
 be allowed, it shall be determined by three disinterested persons, 6
 who shall be appointed by the probate court and whose award, 7
 when accepted by the court, shall be final. 149 Mass. 262. 8

Mortgage of
 real property
 to be personal
 assets.
 1786, 5, § 1.
 1788, 51, § 1.
 R. S. 65, § 11.
 G. S. 96, § 9.
 P. S. 133, § 6.
 16 Mass. 18.
 14 Pick. 399.
 8 Cush. 225.
 11 Cush. 147.

SECTION 7. If a mortgagee of real property, or an assignee of 1
 such mortgagee, dies without having foreclosed the right of re- 2
 demption, the mortgaged property and the debt secured thereby 3
 shall be personal assets in the hands of his executor or adminis- 4
 trator, and shall be administered and accounted for as such; and 5
 the executor or administrator shall have the same rights of entry 6
 and of action under said mortgage as the mortgagee or his assignee. 7

3 Gray, 504.

10 Allen, 430.

108 Mass. 379.

128 Mass. 284.

In case of
 redemption,
 executor, etc.,
 to release.
 1786, 5, §§ 2, 4.
 1788, 51, §§ 2, 4.
 R. S. 65, § 12.
 G. S. 96, § 10.
 P. S. 133, § 7.

SECTION 8. Upon the redemption of such mortgage the money 1
 paid thereon shall be received by the executor or administrator, and 2
 he shall thereupon release and discharge the mortgage; and until 3
 such redemption the executor or administrator, if possession has 4
 been taken either by himself or by the deceased, shall be seised of 5
 the mortgaged property in trust for the persons who would be en- 6
 titled to the money if the property had been redeemed. 7

Land taken
 on execution
 by executor,
 etc., to be per-
 sonal assets.
 1786, 5, § 3.
 1788, 51, § 3.
 R. S. 65, § 13.
 G. S. 96, § 11.
 P. S. 133, § 8.
 4 Mass. 508.
 17 Pick. 477.
 3 Gray, 302.

SECTION 9. If an executor or administrator recovers judgment 1
 for a debt due to the deceased, and levies the execution on real 2
 property, he shall be seised of such real property in trust for the 3
 persons who would have been entitled to the money if the judgment 4
 had been satisfied in money; and the estate so taken on execution 5
 shall be considered as personal assets in his hands; and if redeemed, 6
 the money shall be received by the executor or administrator, who 7
 shall thereupon release the estate. 8

How mort-
 gages held by
 executor, etc.,
 may be sold.
 1786, 5, § 3.
 1788, 51, § 3.
 R. S. 65, § 14.
 1849, 47.
 1851, 288.

SECTION 10. Real property which is held by an executor or ad- 1
 ministrator in mortgage, or taken on execution by him, may, at any 2
 time before the right of redemption is foreclosed, be sold subject to 3
 such right, in the same manner as personal property of a person 4
 deceased; and after such right has been foreclosed, it may be sold 5

6 in the same manner as real property of which the deceased died 1852, 41.
 7 seised. P. S. 133, § 9. 17 Pick. 477. 12 Met. 421. 6 Allen, 77. G. S. 96, §§ 12, 13; 98, § 5.

1 SECTION 11. If land so held by an executor or administrator in How disposed
 2 mortgage or on execution is not redeemed or sold as before pro- of, if not sold.
 3 vided, it shall be assigned and distributed to the same persons and 1786, 5, § 3.
 4 in the same proportions as if it had been part of the personal property 1788, 51, § 3.
 5 of the deceased; and if upon such distribution the property comes R. S. 65, § 15.
 6 to two or more persons, the probate court may cause partition G. S. 96, § 14.
 7 thereof to be made between them, in like manner as if it had been P. S. 133, § 10.
 8 real property held by the deceased in his lifetime.

1 SECTION 12. A reasonable amount expended for a burial lot and Allowance for
 2 a monument may be allowed by the court as part of the funeral ex- burial lot and
 3 penses of a testator or intestate and the court may at any time, monument.
 4 upon petition of an executor or administrator, after notice, deter- 1878, 228.
 5 mine the amount which may be expended. P. S. 144, § 6.
 167 Mass. 307, 577. 1900, 147.
 139 Mass. 304.
 159 Mass. 186.

1 SECTION 13. An executor or administrator may pay to a cem- Cost of per-
 2 etery corporation or to a city or town which has a burial place petual care.
 3 therein a reasonable amount for the perpetual care of the lot in 1897, 321.
 4 which the body of his testate or intestate is buried. The probate
 5 court shall determine, after notice, to whom the same shall be paid
 6 and the amount thereof, and such amount shall be allowed to the
 7 executor or administrator in his final account.

1 SECTION 14. An executor, administrator, guardian or trustee Compensation
 2 shall be allowed his reasonable expenses incurred in the execution and expenses
 3 of his trust, and shall have such compensation for his services as of executor.
 4 the court in which his accounts are settled may allow. R. S. 67, § 8;
 79, § 32.
 1838, 144.
 G. S. 98, § 10;
 109, § 31.
 P. S. 144, § 7. 101 Mass. 592. 121 Mass. 220. 130 Mass. 262.
 19 Pick. 473. 109 Mass. 252, 541. 125 Mass. 307. 146 Mass. 373.
 6 Allen, 494. 117 Mass. 41. 128 Mass. 140. 149 Mass. 375.

1 SECTION 15. Money paid with the approval of the judge of Expense of
 2 probate to a corporation duly organized or authorized to act in this procuring
 3 commonwealth in guaranteeing the fidelity of persons and in acting surety charge-
 4 as surety on bonds, or to any person for acting as surety on any able on estate.
 5 official bond given to such probate court, may be allowed as a charge 1886, 233.
 6 against the estate.

1 SECTION 16. If an executor or administrator, after being duly Executor, etc.,
 2 cited by the probate court, neglects to render an account of his ad- liable for
 3 ministration, his bond may be put in suit as provided in the preced- neglect to
 4 ing chapter: and if he persists in such neglect, judgment shall be account.
 5 rendered against him, and he shall be liable in like manner and to R. S. 67, § 9.
 6 the same extent as an executor in his own wrong. G. S. 98, § 11.
 P. S. 144, § 8.

1 SECTION 17. If an account of an executor, administrator or Opening of set-
 2 trustee is settled in the absence of a person adversely interested and tled accounts.
 3 without notice to him, it may be opened upon his application at any R. S. 67, § 10.
 4 time within six months after such settlement. Upon the settlement G. S. 98, § 12.
 5 of an account, all former accounts of the same accountant may be so 1870, 307.
 6 far opened as to correct a mistake or error therein; but a matter in P. S. 144, § 9.
 7 Pick. 1.
 20 Pick. 510.
 6 Met. 134.
 98 Mass. 462.

101 Mass. 592. dispute, which has been previously heard and determined by the 7
 109 Mass. 541. court, shall not without leave of the court be again brought in ques- 8
 128 Mass. 532. tion by any of the parties to such dispute. 148 Mass. 434. 9
 134 Mass. 120.
 144 Mass. 415,
 461.

Allowance of
 account of
 joint execu-
 tors, etc., on
 oath of one.

SECTION 18. Probate courts may allow the account of two or 1
 more joint executors, administrators, guardians or trustees, upon 2
 the oath of one of them. R. S. 70, § 31; 79, § 33. G. S. 101, § 6. P. S. 144, § 11. 3

Distribution.

SECTION 19. If the estate of a deceased person is to be dis- 1
 tributed in whole or in part, the probate court, upon the petition 2
 of any person interested, after such notice as it may order, may 3
 order the executor or administrator to convert the personal prop- 4
 erty, into cash and to distribute it among the persons entitled 5
 thereto. 6

Final dis-
 charge of exec-
 utor, etc.
 R. S. 70, § 32.
 G. S. 101, § 7.
 P. S. 144, § 12.

SECTION 20. If an executor, administrator, guardian or trustee 1
 has paid or delivered over to the persons entitled thereto the money 2
 or other property in his hands, as required by a decree of a pro- 3
 bate court, he may perpetuate the evidence thereof by presenting 4
 to said court, within one year after the decree is made, an account 5
 of such payments or of the delivery over of such property; which 6
 account being proved to the satisfaction of the court, and veri- 7
 fied by the oath of the accountant, shall be allowed as his final 8
 discharge and ordered to be recorded. Such discharge shall forever 9
 exonerate the accountant and his sureties from all liability under 10
 such decree unless his account is impeached for fraud or manifest 11
 error. 12

Same subject.
 1894, 303.

SECTION 21. If without an order of court an administrator pays 1
 or delivers to a widow, husband or other person any money or other 2
 property in his hands, and thereafter renders an account upon oath 3
 with a full and detailed statement thereof, and after notice it appears 4
 that the persons to whom such money has been paid or property 5
 delivered would have been entitled to an order of court for such 6
 payment or delivery and that such account ought to be allowed, 7
 the probate court may make a decree, which shall have the same 8
 effect to discharge and exonerate the accountant and his sureties 9
 from further liability as if such payment or delivery had been made 10
 under a previous order of the probate court. 11

Appointment
 of next friend
 for persons un-
 born, etc., on
 settlement of
 accounts.
 1877, 189, §§ 1, 2.
 1879, 161, §§ 1, 2.
 P. S. 144, § 13.
 1889, 466.
 1895, 288.
 136 Mass. 67.

SECTION 22. If an account has been filed in the probate court 1
 and if the court finds that the items of said account should be 2
 finally determined and adjudicated, or if the accountant after two 3
 years from a former adjudication or from his appointment desires 4
 such determination and adjudication, notice of such proposed action 5
 on such account shall be given to all parties as it may order. If the 6
 interest of a person unborn, unascertained, or legally incompetent 7
 to act in his own behalf, is not represented except by the ac- 8
 countant, the court shall appoint a competent and disinterested 9
 person to act as guardian ad litem or next friend for such person, 10
 and to represent his interest in the case. The person so appointed 11
 shall make oath to perform his duty faithfully and impartially, and 12
 shall be entitled to such reasonable compensation for his services 13
 as the court allows. 14

1 SECTION 23. If money which a decree of a probate court has
 2 ordered to be paid over remains for six months unclaimed, the ex-
 3 ecutor, administrator, guardian or trustee, who was ordered to pay
 4 over the same, may deposit it in a savings bank or other like
 5 institution, or invest it in bank stock or other stocks, as the pro-
 6 bate court orders, to accumulate for the benefit of the person entitled
 7 thereto. Such deposit or investment shall be made in the name of
 8 the judge of probate for the time being, and shall be subject to the
 9 order of the judge and of his successors in office as hereinafter pro-
 10 vided. The person who makes such deposit or investment shall
 11 file in the probate court a memorandum thereof, with the original
 12 certificates or other evidences of title thereto, which shall be allowed
 13 as a sufficient voucher for such payment. When the person entitled
 14 to the money deposited satisfies the judge of his right to receive
 15 it, the judge shall cause it to be paid over and transferred to him.

Unclaimed
 money to be
 deposited in
 savings bank,
 etc.
 R. S. 70, §§ 33,
 34.
 G. S. 101, § 8.
 P. S. 144, § 16.
 153 Mass. 14.

1 SECTION 24. If the residence of a legatee under the provisions
 2 of a will which has been duly proved or of a person entitled to a
 3 portion of a trust fund under an order of distribution provided by
 4 section twenty of chapter one hundred and forty-seven is unknown
 5 or if he is a minor without a legal guardian, the court may, if satis-
 6 fied of such fact, order that the legacy or the share of the trust fund
 7 due to him be deposited or invested as provided in and subject to
 8 the provisions of the preceding section.

Deposit of
 legacies, etc.,
 of unknown
 legatee.
 1885, 376.
 1889, 185.
 1898, 65, § 2.
 145 Mass. 517.

1 SECTION 25. If an executor, administrator, guardian or trustee
 2 has money which he considers it advisable to deposit in a savings bank
 3 in the name of the judge of probate for the benefit of such person, he
 4 may apply to the probate court by which he was appointed for leave
 5 so to do, and the court may in its discretion, without notice, direct
 6 such money so to be deposited. When the deposit is made the
 7 deposit book of the bank shall be filed in said court. When the per-
 8 son entitled to such money satisfies the court of his right to receive
 9 it, the court shall by decree direct it to be transferred to him.

— of other
 funds.
 1899, 90.

1 SECTION 26. The probate court may, upon the petition of any
 2 person interested and after public notice, order all money or the
 3 proceeds thereof deposited or invested by its authority and which
 4 shall have remained unclaimed for twenty years from the date of
 5 such deposit or investment to be paid to the residuary legatee, if
 6 any, of the testator to whose estate the money belonged, or, if such
 7 residuary legatee is dead, to his heirs who are living at the time of
 8 such distribution; and if no such residuary legatee or any of his
 9 heirs be then living, or if the deceased person died intestate, said
 10 money and the proceeds thereof shall be disposed of and distrib-
 11 uted among the persons who are entitled thereto and in the man-
 12 ner provided by chapter one hundred and forty. The court shall
 13 first require from the person or persons to whom such money shall
 14 be ordered to be paid, a sufficient bond of indemnity with two suffi-
 15 cient sureties to be approved by him, with condition to repay to
 16 the person or persons for whose benefit such deposit or investment
 17 was originally made or to the personal representatives of such per-
 18 son or persons, all money paid over by the order of the court under
 19 the provisions of this section.

Final disposi-
 tion of de-
 posits.
 1890, 408, § 1.

If beneficiaries live out of commonwealth courts may order trust fund paid over to trustee in another state. 1879, 176, § 1. P. S. 144, § 17.

SECTION 27. If all living parties who are interested as beneficiaries in a trust created by a will which is proved and allowed in this commonwealth reside out of this commonwealth, the probate court which has jurisdiction of the trust may, upon petition of the parties in interest, or of the executor, administrator or trustee, if it considers it just and expedient, authorize the executor, administrator or trustee to pay over the fund to a trustee appointed by the proper court in any other state or country, if all the beneficiaries who are living and the executor, administrator or trustee signify their consent, and the court is satisfied that the laws of such other state or country secure the due performance of said trust; and upon such payment, shown to the satisfaction of said probate court, the executor, administrator or trustee appointed here may be discharged from further responsibility by decree of said court.

Same subject. 1879, 176, § 2. P. S. 144, § 18.

SECTION 28. If there are contingent interests in such trust fund, whether the persons who may be entitled thereto are in being or not, or if any of the beneficiaries are minors, the court, before making an order or decree, shall cause such interests and minors to be properly represented by guardians ad litem or otherwise at its discretion.

Settlements by receivers. 1897, 400. 171 Mass. 22. 176 Mass. 283.

SECTION 29. The following claims shall, in the settlement of estates by receivers, be entitled to priority in the order named:

First, Debts due to the United States or debts due to, or taxes assessed by, this commonwealth or a county, city or town herein.

Second, Wages to an amount of not more than one hundred dollars due to an operative, clerk or servant for labor, either performed within one year last preceding the appointment of the receiver or for the payment for which a suit, which was commenced within one year after the performance of the labor, is pending or was terminated within one year after said appointment.

Third, Debts to an amount of not more than fifty dollars due to physicians for medical attendance on the debtor or his family, which were rendered within six months prior to said appointment.

TITLE III.

OF THE DOMESTIC RELATIONS.

CHAPTER 151. — Of Marriage.

CHAPTER 152. — Of Divorce.

CHAPTER 153. — Of Certain Rights and Liabilities of Husband and Wife.

CHAPTER 154. — Of the Adoption of Children and Change of Names.

CHAPTER 155. — Of Masters, Apprentices and Servants.

CHAPTER 151.

OF MARRIAGE.

SECTIONS 1-11. — Certain Marriages Prohibited.

SECTIONS 12-15. — Legitimacy and Care of Issue of Void Marriages.

SECTIONS 16-29. — Notice of Intention of Marriage.

SECTIONS 30-36. — Solemnization of Marriage.

SECTIONS 37-39. — Evidence of Marriage.

SECTIONS 40-44. — Penalties.

CERTAIN MARRIAGES PROHIBITED.

1 SECTION 1. No man shall marry his mother, grandmother, daugh- Marriage be-
2 ter, granddaughter, sister, stepmother, grandfather's wife, son's tween certain
3 wife, grandson's wife, wife's mother, wife's grandmother, wife's relations pro-
4 daughter, wife's granddaughter, brother's daughter, sister's daugh- hibited.
5 ter, father's sister or mother's sister. G. S. 106, § 1. P. S. 145, § 1. C. L. 102, § 5.
1785-6, 2, § 1.
1785, 69, § 1.
R. S. 75, § 1.

1 SECTION 2. No woman shall marry her father, grandfather, son, Same subject.
2 grandson, brother, stepfather, grandmother's husband, daughter's 1785, 69, § 1.
3 husband, granddaughter's husband, husband's father, husband's R. S. 75, § 2.
4 grandfather, husband's son, husband's grandson, brother's son, G. S. 106, § 2.
5 sister's son, father's brother or mother's brother. P. S. 145, § 2.
10 Met. 451.

1 SECTION 3. The prohibition of the two preceding sections shall Same subject.
2 continue notwithstanding the dissolution, by death or divorce, of R. S. 75, § 3.
3 the marriage by which the affinity was created, unless the divorce G. S. 106, § 3.
4 was granted because such marriage was originally unlawful or void. P. S. 145, § 3.

1 SECTION 4. A marriage contracted while either party thereto has Polygamy for-
2 a former wife or husband living, except as provided in section six bidden.
3 and in chapter one hundred and fifty-two, shall be void. 1784, 40, § 2.
1785, 69, § 2.
R. S. 75, § 4.
G. S. 106, § 4.

P. S. 145, § 4.

113 Mass. 458.

170 Mass. 150.

171 Mass. 560.

Insane persons
incapable of
marrying.
R. S. 75, § 5.
1843, 5.
1845, 222.
G. S. 106, § 5;
107, § 2.

SECTION 5. An insane person or an idiot shall not be capable of contracting marriage. The validity of a marriage shall not be questioned by reason of the insanity or idiocy of either party in the trial of a collateral issue, but shall be raised only in a process instituted in the lifetime of both parties to test such validity.

P. S. 145, §§ 5, 9.

12 Mass. 363.

4 Pick. 32.

4 Allen, 458.

Marriage dur-
ing existence
of former mar-
riage valid,
when.
1895, 427.
1896, 499.
170 Mass. 150.
171 Mass. 560.

SECTION 6. If a person, during the lifetime of a husband or wife with whom the marriage is in force, enters into a subsequent marriage contract with due legal ceremony and the parties thereto live together thereafter as husband and wife, and such subsequent marriage contract was entered into by one of the parties in good faith, in the full belief that the former husband or wife was dead, that the former marriage had been annulled by a divorce, or without knowledge of such former marriage, they shall, after the impediment to their marriage has been removed by the death or divorce of the other party to the former marriage, if they continue to live together as husband and wife in good faith on the part of one of them, be held to have been legally married from and after the removal of such impediment, and the issue of such subsequent marriage shall be considered as the legitimate issue of both parents.

Minors not to
be married
without con-
sent of parents,
etc.
1692-3, 25, § 1.
1695-6, 2, § 4.
1786, 3, § 3.
1834, 177, § 2.
R. S. 75, § 15.
G. S. 106, § 13.

SECTION 7. A magistrate or minister shall not solemnize a marriage if he has reasonable cause to believe that the male is under the age of twenty-one years or the female is under the age of eighteen years, except with the consent of the parent or guardian having the custody of the minor, if there is any such parent or guardian in this commonwealth competent to act.

P. S. 145, § 6.

127 Mass. 468.

Marriages
void without
decree, when.
1695-6, 2, § 1.
1785, 69, § 2.
R. S. 76, § 1.
G. S. 107, § 1.
P. S. 145, § 7.

SECTION 8. A marriage solemnized within this commonwealth which is prohibited by reason of consanguinity or affinity between the parties, or of either of them having a former wife or husband living, shall be void without a decree of divorce or other legal process.

— between
minors void
after separa-
tion, etc.
R. S. 76, § 2.
G. S. 107, § 3.
P. S. 145, § 8.

SECTION 9. A marriage solemnized when either party is under the age of consent shall be void without a decree of divorce or other legal process if the parties separate during such nonage and do not afterward cohabit.

1 Gray, 119.

— foreign,
void, when.
R. S. 75, § 6.
G. S. 106, § 6.
P. S. 145, § 10.
157 Mass. 73.
170 Mass. 150.
171 Mass. 560.

SECTION 10. A marriage shall be void in this commonwealth if the parties, both being resident here and intending to return and reside here, in order to evade any of the provisions of the first five sections of this chapter go into another state or country and there have their marriage solemnized, and return and reside here.

Determination
of validity of
marriage.
R. S. 76, §§ 3, 4.
1846, 197.
1853, 27.
G. S. 107, §§ 4, 5.
P. S. 145, § 11.
1886, 36.
114 Mass. 563,
596.
149 Mass. 223.
156 Mass. 578.
161 Mass. 115.

SECTION 11. If the validity of a marriage is doubted, either party may file a libel for annulling such marriage, or if it is denied or doubted by either party, the other party may file a libel for affirming the marriage. Such libel shall be filed in the same manner as a libel for divorce, and all the provisions of chapter one hundred and fifty-two relative to libels for divorce shall, so far as appropriate, apply to libels under the provisions of this section. Upon proof of the validity or nullity of the marriage, it shall be

9 affirmed or declared void by a decree of the court, and such decree
10 of nullity may be made although the marriage was solemnized out of
11 the commonwealth, if at that time and also when the libel was filed
12 the libellant had his domicil in the commonwealth or has resided in
13 this commonwealth for five years last preceeding the filing of said
14 libel, unless the court finds that he has removed into this common-
15 wealth for the purpose of obtaining said decree.

171 Mass. 404.
175 Mass. 157,
383.

LEGITIMACY AND CARE OF ISSUE OF VOID MARRIAGES.

1 SECTION 12. The issue of a marriage which is declared void by
2 reason of consanguinity or affinity between the parties shall be
3 illegitimate. R. S. 76, § 21. G. S. 107, § 28. P. S. 145, § 12.

Issue of void
marriages
illegitimate.

1 SECTION 13. The issue of a marriage which is declared void by
2 reason of the nonage, insanity or idiocy of either party shall be the
3 legitimate issue of the parent who was capable of contracting the
4 marriage. P. S. 145, § 13.

— of marriage
void by reason
of nonage,
insanity, &c.
R. S. 76, § 22.
G. S. 107, § 29.

1 SECTION 14. If a marriage is declared void by reason of a prior
2 marriage of either party, and it appears that the second marriage
3 was contracted in good faith and with the full belief of the parties
4 that the former husband or wife was dead, that fact shall be stated
5 in the decree, and the issue of the second marriage, born or begotten
6 before the commencement of the suit, shall be the legitimate issue
7 of the parent capable of contracting the marriage.

— of marriage
void by reason
of prior
marriage.
R. S. 76, § 23.
G. S. 107, § 30.
P. S. 145, § 14.
114 Mass. 563.
156 Mass. 578.

1 SECTION 15. Upon or after a decree of nullity, the court shall
2 have similar power to make orders relative to the care, custody
3 and maintenance of the minor children of the parties as upon a de-
4 cree of divorce. G. S. 107, § 33. P. S. 145, § 15.

Care and main-
tenance of
children of
void marriage.
1820, 56, § 1.
R. S. 76, § 26.

NOTICE OF INTENTION OF MARRIAGE.

1 SECTION 16. Persons who intend to be joined in marriage in this
2 commonwealth shall before their marriage cause notice of their in-
3 tention to be entered in the office of the clerk or registrar of the city
4 or town in which they respectively dwell, or, if they do not dwell
5 within the commonwealth, in the office of the clerk or registrar of
6 the city or town in which they propose to have the marriage solemn-
7 ized. G. S. 106, § 7. 1867, 58, § 1. P. S. 145, § 16.

Notice of inten-
tion of mar-
riage to be
entered.
C. L. 101, § 2.
1635-6, 2, § 4.
1727-8, 11.
1786, 3, § 3.
1834, 177, § 2.
R. S. 75, § 7.
1850, 121, § 1.

1 SECTION 17. The clerk or registrar may require notice of inten-
2 tion of marriage to be given to him in writing, on blanks to be
3 furnished by him, by one of the parties to such intended marriage,
4 or by his or her parent or legal guardian, and may require the
5 party who gives such notice to make oath before him to the truth
6 of all the statements therein, whereof he or she could have knowl-
7 edge. No fee shall be charged for administering such oath.

— form of.
1894, 409, § 1.

1 SECTION 18. The clerk or registrar shall not be required to
2 receive notices of intencion of marriage on the Lord's day nor on
3 legal holidays nor at any place except his office.

— where and
when
receivable.
1894, 409, § 3.

Notice of intention of marriage not receivable from certain minors. 1894, 401, § 1.

SECTION 19. The clerk or registrar shall not, except as provided in the following section, receive a notice of the intention of marriage of any male under the age of eighteen years, nor of any female under the age of sixteen years.

Marriage of minors, how authorized. 1894, 401, § 2. 1893, 197.

SECTION 20. The judge of probate for the county in which a minor under the age specified in the preceding section resides may, after a hearing, make an order allowing the marriage of such minor, if the father of such minor or, if he is not living, the mother or, if neither parent is alive and resident in this commonwealth, a legal guardian duly appointed has consented to such order. Said judge of probate may also after a hearing make such order in the case of a person whose age is alleged to exceed that specified in the preceding section, but who is unable to produce an official record of birth, whereby the reasonable doubt of the clerk or registrar, as exercised under the provisions of section twenty-eight, may be removed. Upon the receipt of a certified copy of such order by the clerk or registrar of the city or town in which such minor resides, he shall receive the notice required by law and issue a certificate as in other cases.

Notice of intention not to be given without consent of parties. 1894, 409, § 6.

SECTION 21. Whoever, without the consent of both parties to an intended marriage, gives the notice of their intention of marriage which is required by law shall be liable in damages to either of such parties whose name was so used without such consent. The superior court may, upon petition of either party who is alleged to intend marriage in a notice of intention of marriage given without the consent of both parties, and which is not followed by their intermarriage, after notice and a hearing, order that such notice of intention of marriage be cancelled in the records of the city or town in which it was recorded.

Cancellation of notice of intention. 1894, 409, § 7.

Notice of intention of marriage of adopted persons. 1897, 424, § 4.

SECTION 22. A party to an intended marriage who has been legally adopted shall, upon the notice of intention of such marriage, give the names of his or her parents by adoption; and the names of his or her parents may also be added. The consent of a parent by adoption to the marriage of a minor shall be sufficient if the consent of a parent of a minor is required by law as a preliminary to marriage. If the natural parents of a minor have been divorced and the consent of one of them is required by law, preliminary to the marriage of such minor, the consent of the parent who has the custody of such minor shall be sufficient.

Certificate of intention of marriage. 1727-8, 11. 1786, 3, § 3. 1834, 17, § 2. R. S. 75, § 9. 1850, 121, § 2. G. S. 106, § 8. 1867, 58, § 1. P. S. 145, § 17.

SECTION 23. The clerk or registrar shall deliver to the parties a certificate signed by him, specifying the time when notice of the intention of marriage was entered with him and all facts relative to the marriage which are required by law to be ascertained and recorded, except those relative to the person by whom the marriage is to be solemnized. Such certificate shall be delivered to the minister or magistrate before whom the marriage is to be contracted, before he proceeds to solemnize the same.

Alteration of certificate of intention prohibited. 1897, 424, § 1.

SECTION 24. No alteration or erasure shall be made by any person on such certificate, until it has been returned to the posses-

3 sion of such clerk or registrar, and then only in such form and to
4 such extent as said clerk or registrar may prescribe. Any such cer-
5 tificate may be recorded after correction in accordance herewith.

1 SECTION 25. If the clerk or registrar issues such certificate to a
2 male under the age of twenty-one years, or to a female under the
3 age of eighteen years, when he has reasonable cause to believe the
4 person to be under such age, except upon the application or con-
5 sent in writing of the parent, master or guardian of such person,
6 he shall forfeit not more than one hundred dollars; but if there is
7 no parent, master or guardian in this commonwealth competent to
8 act, a certificate may be issued without such application or consent.

Penalty for
issuing certi-
cate to certain
minors.
1853, 335, § 1.
G. S. 106, § 9.
P. S. 145, § 18.

1 SECTION 26. If it is necessary to give notice in two cities or
2 towns of the intention of marriage of a minor, the clerk or registrar
3 who first takes the consent of the parent or guardian shall take it in
4 duplicate, retaining one copy and delivering the other duly attested
5 by him to the person who obtains the certificate, to be given to the
6 clerk or registrar issuing the second certificate; and no fee shall be
7 charged for such consent or copy.

Duplicate
copies of no-
tice of inten-
tion of minors,
when.
1894, 409, § 4.

1 SECTION 27. The clerk or registrar may require of an applicant
2 for such certificate an affidavit setting forth the age of the parties.
3 Such affidavit shall be sworn to before a justice of the peace, and
4 shall be sufficient proof of age to authorize the issuing of the
5 certificate.

Affidavit of
age.
1853, 335, § 2.
G. S. 106, § 10.
P. S. 145, § 19.

1 SECTION 28. The clerk or registrar may refuse to issue a cer-
2 tificate if he has reasonable cause to believe that any of the state-
3 ments contained in the notice of intention of marriage are incorrect;
4 but he may, in his discretion, accept depositions under oath, made
5 before him, which shall be sufficient proof of the facts therein stated
6 to authorize the issuing of a certificate. He may also dispense with
7 the statement of any facts required by law to be given in a notice of
8 intention of marriage, if they do not relate to or affect the identifi-
9 cation or age of the parties, if he is satisfied that the same cannot
10 with reasonable effort be obtained.

Refusal of cer-
tificate, when.
1894, 409, § 2.

1 SECTION 29. If a marriage is solemnized in another state be-
2 tween parties living in this commonwealth, who return to dwell
3 here, they shall, within seven days after their return, file with the
4 clerk or registrar of the city or town in which either of them lived
5 at the time of their marriage a certificate or declaration of their mar-
6 riage, including the facts relative to marriages which are required
7 by law, and for neglect thereof shall forfeit ten dollars.

Citizens mar-
ried outside
commonwealth
to file certi-
cate here.
1850, 121, § 3.
G. S. 106, § 12.
P. S. 145, § 21.

SOLEMNIZATION OF MARRIAGE.

1 SECTION 30. A marriage may be solemnized in any place within
2 this commonwealth by a minister of the gospel, ordained according
3 to the usage of his denomination, who resides in this commonwealth
4 and continues to perform the functions of his office; by a rabbi of
5 the Israelitish faith, duly licensed by a congregation of said faith

Solemnization
of marriage.
C. L. 102, § 5.
1692-3, 25, § 1.
1695-6, 2, § 4.
1716-17, 16, § 1.
1762-3, 28.
1772-3, 31, §§ 1,
2.

1786, 3, §§ 1, 2, 8.
1817, 141.
1820, 55.
1834, 177, §§ 1, 6.
R. S. 75, §§ 16,
22.
1850, 121, § 5.
G. S. 106, §§ 14,
15.
1867, 58, § 2.
P. S. 145, §§ 22,
23.
1893, 461, § 1.
1894, 409, § 5.
1896, 506, § 4.
1899, 387, § 1.
1 Pick. 234.
127 Mass. 459.
[1 Op. A. G.
445.]

established in this commonwealth, who has filed with the clerk or 6
registrar of the city or town in which he resides a certificate of the 7
establishment of the synagogue, the date of his appointment thereto 8
and of the term of his engagement; by a justice of the peace if he 9
is also clerk or assistant clerk of a city or town, or a registrar or assist- 10
ant registrar, in the city or town in which he holds such office, or if 11
he is also clerk or assistant clerk of a court, in the city or town in 12
which the court is authorized to be held, or if he has been desig- 13
nated as provided in the following section and has received a cer- 14
tificate of designation and has qualified thereunder, in the city or 15
town in which he resides; and it may be solemnized among Friends 16
or Quakers according to the usage of their societies; but no person 17
shall solemnize a marriage in this commonwealth unless he is able 18
to read and write the English language. 19

Designation of
justices of the
peace to solemn-
ize marriage.
1899, 387, §§ 2, 3.

SECTION 31. The governor may in his discretion designate a 1
justice of the peace in each city and town and such further number, 2
not exceeding one for every five thousand inhabitants of a city or 3
town, as he considers expedient, to solemnize marriages, and may 4
for cause at any time revoke such designation. The secretary of 5
the commonwealth shall, upon payment of five dollars to him by a 6
justice of the peace so designated, issue to him a certificate of such 7
designation. 8

Persons solemn-
izing mar-
riages to keep
records and
make returns.
C. L. 130, § 2.
1692-3, 25, § 3.
1695-6, 2, §§ 4, 6.
1716-17, 16, § 3.
1786, 3, §§ 6, 8.
1795, 7.
1817, 61.
1834, 177, §§ 5, 6.
R. S. 75, §§ 17,
18, 23.
1844, 159, § 3.
G. S. 106, §§ 16,
17.
1879, 116.
1881, 11, § 1.
P. S. 145, § 24.
1887, 202, § 3.
1892, 300.
1897, 424, § 5.

SECTION 32. Every justice of the peace, minister, rabbi and 1
clerk or keeper of the records of a meeting wherein marriages among 2
Friends or Quakers are solemnized shall make and keep a record of 3
each marriage solemnized by him, or in such meeting, and of all facts 4
relative to the marriage which are required to be recorded by the 5
provisions of section one of chapter twenty-nine. He shall also, 6
between the first and tenth days of the month following each mar- 7
riage solemnized by him, return each certificate issued under the 8
provisions of section twenty-three to the clerk or registrar who 9
issued the same; and if the marriage was solemnized in a city 10
or town other than the place or places in which the parties to the 11
marriage resided, return a copy of the certificate, or of either certifi- 12
cate if two were issued, to the clerk or registrar of the city or town 13
in which the marriage was solemnized. Each certificate and copy 14
so returned shall contain a statement giving the place and date of 15
marriage, attested by the signature of the person who solemnized 16
the same or of said clerk or keeper of the records of a Friends or 17
Quaker meeting. The person who solemnized the marriage shall 18
add the title of the office by virtue of which the marriage was solemn- 19
ized, as "justice of the peace", "minister of the gospel", "clergy- 20
man", "priest" or "rabbi", and his residence. All certificates or 21
copies so returned shall be recorded by the clerk or registrar who 22
receives them. Whoever neglects to make the record and returns 23
required by the provisions of this section shall for each neglect 24
forfeit not less than twenty nor more than one hundred dollars. 25

Correction of
imperfect cer-
tificates of
marriage.
1897, 424, § 2.

SECTION 33. If a certificate of marriage is found, upon its re- 1
turn to the clerk or registrar, to have been incorrectly filled out 2
by the person who solemnized a marriage under it, the clerk or 3
registrar shall have it corrected and shall enforce the penalties, if 4

5 any, provided by law relative thereto. Such imperfect certificates
6 shall be recorded and indexed by the clerk or registrar.

1 SECTION 34. A marriage which is solemnized by a person who
2 professes to be a justice of the peace, a minister of the gospel or a
3 rabbi or which is solemnized among Friends or Quakers according
4 to their usages shall not be void, nor shall the validity thereof be
5 in any way affected by want of authority in such person or society,
6 or by an omission or by informality in the manner of entering the
7 intention of marriage, if the marriage is in other respects lawful and
8 is consummated with a full belief of either of the persons so married
9 that they have been lawfully married.

Marriages
valid, though
irregularly
solemnized.
1834, 177, § 7.
R. S. 75, § 24.
G. S. 106, § 20.
1881, 11, § 2.
P. S. 145, § 27.
1893, 461, § 2.
110 Mass. 314.
127 Mass. 465.
155 Mass. 534.

1 SECTION 35. Marriages which are solemnized in a foreign coun-
2 try by a consul or diplomatic agent of the United States shall be
3 valid in this commonwealth. P. S. 145, § 28. 5 Allen, 257.

Marriage by
consul, etc.
G. S. 106, § 23.

1 SECTION 36. A city by ordinance and a town by vote may
2 authorize its clerk or registrar to pay on demand, in his office,
3 twenty-five cents to any person who has legally solemnized a mar-
4 riage in this commonwealth, after the receipt by such clerk or
5 registrar of the certificate in legal form of the solemnization of such
6 marriage. A city or town which passes such ordinance or vote
7 shall annually appropriate the money necessary therefor, and the
8 clerk or registrar thereof shall file quarterly with the treasurer or
9 other proper financial officer of said city or town proper vouchers
10 for all payments so made by him.

Fees by cities
and towns to
persons
solemnizing
marriages.
1897, 424, § 3.

EVIDENCE OF MARRIAGE.

1 SECTION 37. The record of a marriage made and kept as pro-
2 vided by law by the person by whom the marriage was solemnized,
3 or by the clerk or registrar of a city or town, or a copy of such
4 record duly certified, shall be prima facie evidence of such marriage.

Record.
R. S. 75, § 25.
G. S. 106, § 21.
P. S. 145, § 29.
10 Allen, 161.
133 Mass. 246.
156 Mass. 228.

1 SECTION 38. A copy of the record of a marriage solemnized by
2 a consul or diplomatic agent of the United States or a certificate
3 from such consul or agent shall be prima facie evidence of such
4 marriage.

Certificate,
etc., of consul,
etc.
G. S. 106, § 23.
P. S. 145, § 30.

1 SECTION 39. Marriage may be proved by evidence of an admis-
2 sion thereof by an adverse party, by evidence of general repute or
3 of cohabitation of the parties as married persons, or of any other
4 fact from which the fact may be inferred. G. S. 106, § 22. P. S. 145, § 31.

Admissions
and general
repute, etc.
1840, 84.
1841, 20.

3 Pick. 293.
14 Gray, 411.

5 Allen, 257.
10 Allen, 196.

99 Mass. 444.
110 Mass. 314.

120 Mass. 387.
163 Mass. 453.

PENALTIES.

1 SECTION 40. Whoever, not being duly authorized by the stat-
2 utes of this commonwealth, undertakes to join persons in marriage
3 in this commonwealth shall be punished by a fine of not more than
4 five hundred dollars or by imprisonment for not more than one year,
5 or by both such fine and imprisonment.

Penalty for
solemnizing
marriage with-
out authority.
1786, 3, § 5.
1834, 177, § 4.
R. S. 75, § 20.

G. S. 106, § 19.

P. S. 145, § 26.

1896, 306, § 2.

Penalty
for joining
persons in
marriage with-
out certificate.
1695-6, 2, § 4.
1772-3, 31, § 3.
1786, 3, § 5.
1834, 177, §§ 4, 9.

SECTION 41. Whoever, being duly authorized to solemnize marriages in this commonwealth, joins in marriage persons who have not complied with the statutes relative to procuring certificates of notice of intention of marriage shall be punished by a fine of not more than five hundred dollars.

G. S. 106, § 18. 1867, 58, § 3. P. S. 145, § 25. 1896, 306, § 1.

— for illegal
alteration of
certificate of
intention.
1897, 424, § 1.

SECTION 42. Whoever makes an illegal alteration or erasure on a certificate of intention of marriage shall be punished by a fine of not more than one hundred dollars.

— for violation
of certain pro-
visions of this
chapter.
1894, 409, § 8.

SECTION 43. Whoever violates any of the provisions of sections seven, seventeen, twenty-one or twenty-six shall, upon conviction thereof within one year after such violation, be punished as provided in section forty.

— for false
statement.
1857, 34.
G. S. 106, § 11.
P. S. 145, § 20.

SECTION 44. Whoever, when applying for the certificate described in section twenty-three, wilfully makes a false statement relative to the age, residence, parent, master or guardian of either of the parties intending marriage shall forfeit not more than two hundred dollars.

CHAPTER 152.

OF DIVORCE.

- SECTIONS 1-5. — Causes for Divorce.
SECTIONS 6-19. — Libels for Divorce.
SECTION 20. — Resumption of Former Name by Wife.
SECTION 21. — Right to Marry Again.
SECTION 22. — Effect of Divorce on Legitimacy of Children.
SECTIONS 23, 24. — Effect of Divorce on Rights to Property.
SECTIONS 25-28. — Care and Support of Children.
SECTIONS 29-34. — General Powers of Court.
SECTION 35. — Foreign Divorces.
SECTIONS 36-41. — Criminal Provisions.
SECTIONS 42, 43. — Statistics of Divorce.

CAUSES FOR DIVORCE.

Causes for
divorce.
1785, 69, § 3.
1810, 119.
R. S. 76, §§ 5, 6.
1838, 126, § 1.
1857, 228, § 2.
G. S. 107, §§ 6,
7, 9.
1870, 404, § 2.
1873, 371, §§ 2, 6.
P. S. 146, § 1.
1889, 447.
1 Mass. 240,
346.
4 Mass. 586.
7 Mass. 474.

SECTION 1. A divorce from the bond of matrimony may be decreed for adultery, impotency, utter desertion continued for three consecutive years next prior to the filing of the libel, gross and confirmed habits of intoxication caused by the voluntary and excessive use of intoxicating liquor, opium or other drugs, cruel and abusive treatment or, on the libel of the wife, if the husband, being of sufficient ability, grossly or wantonly and cruelly refuses or neglects to provide suitable maintenance for her.

7 Gray, 279. 126 Mass. 205. 150 Mass. 111. 160 Mass. 216.
39 Mass. 493. 140 Mass. 528. 154 Mass. 515. 168 Mass. 50, 204, 456.
112 Mass. 298. 142 Mass. 361. 157 Mass. 506. 171 Mass. 146.
117 Mass. 202. 143 Mass. 577. 159 Mass. 281. 176 Mass. 7.

Same subject.
R. S. 76, § 5.
1850, 100, § 1.

SECTION 2. A divorce may also be decreed if either party has been sentenced to confinement at hard labor for life or for five years

- 3 or more in the state prison or in a jail or house of correction; and, G. S. 107, § 6.
 4 after a divorce for such cause, no pardon granted to the party so P. S. 146, § 2.
 5 sentenced shall restore such party to his or her conjugal rights. 124 Mass. 394.
 151 Mass. 151.
 169 Mass. 592.

- 1 SECTION 3. A divorce may be decreed for any of the causes Divorce after
 2 allowed by the provisions of the two preceding sections although absence raising
 3 the libellee has been continuously absent for such time and under a presumption
 4 such circumstances as would raise a presumption of death. 1884, 219.

113 Mass. 314.

147 Mass. 294.

- 1 SECTION 4. A divorce shall not, except as provided in the fol- —only if
 2 lowing section, be decreed if the parties have never lived together parties have
 3 as husband and wife in this commonwealth; nor for a cause which occurred lived together
 4 occurred in another state or country, unless before such cause occurred, in common-
 5 the parties had lived together as husband and wife in this common- wealth.
 6 wealth, and one of them lived in this commonwealth at the time R. S. 76, §§ 9-11.
 7 when the cause occurred. G. S. 107, § 12.
 135 Mass. 83. P. S. 146, § 4.
 143 Mass. 274. 98 Mass. 158.
 103 Mass. 574.
 115 Mass. 438.

- 1 SECTION 5. If the libellant has lived in the commonwealth for Exception.
 2 five years last preceding the filing of the libel, or if the parties 1843, 77.
 3 were inhabitants of this commonwealth at the time of their marriage G. S. 107, § 11.
 4 and the libellant has lived in this commonwealth for three years last 1877, 174.
 5 preceding such filing, a divorce may be decreed for any cause P. S. 146, § 5.
 6 allowed by law, whether it occurred in this commonwealth or else- 6 Gray, 157.
 7 where, unless it appears that the libellant has removed into this 154 Mass. 515.
 8 commonwealth for the purpose of obtaining a divorce. 161 Mass. 508.

LIBELS FOR DIVORCE.

- 1 SECTION 6. Libels for divorce shall be filed, heard and determined Venue of libel.
 2 in the superior court held for the county in which one of the parties 1692-3, 25, § 4.
 3 lives, except that, if the libellant has left the county in which the 1785, 69, § 7.
 4 parties lived together and the libellee still lives therein, the libel 1820, 14, § 10.
 5 shall be heard and determined in the court held for that county. R. S. 76, §§ 7, 8.
 1851, 82, § 2.
 G. S. 107, §§ 13,
 14.
 P. S. 146, § 6.

1887, 332, § 1.

111 Mass. 158.

150 Mass. 280.

- 1 SECTION 7. The libel shall be signed by the libellant, if of sound Libel to be
 2 mind and of legal age to consent to marriage; otherwise, it may be signed.
 3 signed by the guardian of the libellant or by a person admitted by R. S. 76, § 12.
 4 the court to prosecute the libel as his or her next friend. G. S. 107, § 16.
 P. S. 146, § 7.
 7 Mass. 96.
 1 Met. 382.

8 Allen, 311.

139 Mass. 377.

- 1 SECTION 8. The court or clerk may order the libellee to be Notice to
 2 summoned to appear and answer at the court having jurisdiction of libellee.
 3 the cause, by the publication of the libel or of the substance thereof, 1785, 69, § 8.
 4 with the order thereon, in one or more newspapers which shall be R. S. 76, §§ 15-
 5 designated in the order, or by delivering to the libellee an attested 17.
 6 copy of the libel and a summons, or in such other manner as it or G. S. 107, §§ 19,
 7 he may require. If such order is made by the clerk, the court may 20.
 8 order an additional notice. If the libellee does not appear and the 1862, 90.
 9 court considers the notice defective or insufficient, it may order 1865, 109, § 1.
 10 further notice. P. S. 146, §§ 9,
 10. 1890, 370.
 1898, 487.
 135 Mass. 191.
 141 Mass. 432.

Who may
contest.
1890, 370.
1898, 487.

SECTION 9. A person with whom the libellee is alleged in a libel for divorce for adultery to have committed adultery may appear and contest the libel.

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Attachment
of husband's
property.
1855, 137, § 1.
G. S. 107, § 50.
1866, 148, § 2.
P. S. 146, § 11.
107 Mass. 428.

SECTION 10. Upon a libel by a wife for a divorce for a cause which accrued after marriage, the real and personal property of the husband may be attached to secure a suitable support and maintenance to her and to such children as may be committed to her care and custody.

150 Mass. 92.

163 Mass. 530.

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— how made.
1855, 137, §§ 2, 3,
5.
G. S. 107, § 51.
1866, 148, § 3.
P. S. 146, § 12.

SECTION 11. The attachment may be made upon the summons issued upon the libel, in the same manner as attachments are made upon writs in actions at law, for an amount which shall be expressed in the summons or order of notice. The attachment may be made by trustee process, in which case there shall be inserted in the summons or order of notice a direction to attach the goods, effects and credits of the libellee in the hands of the alleged trustee, and service shall be made upon the trustee by copy. If attachment is made by the trustee process, the libel shall be filed as provided in section six notwithstanding the provisions of section two of chapter one hundred and eighty-nine. The court may in such cases make all necessary orders to secure to the trustee his costs.

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Same subject.
1855, 137, § 4.
G. S. 107, § 52.
P. S. 146, § 13.

SECTION 12. The laws relative to attachments of real or personal property shall apply to attachments herein provided for, so far as such laws are not inconsistent with the provisions of the two preceding sections.

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Guardian for
insane libellee.
R. S. 76, § 18.
G. S. 107, § 21.
P. S. 146, § 14.
13 Gray, 264.
114 Mass. 379.

SECTION 13. If during the pendency of a libel the libellee becomes insane, the court shall appoint a suitable guardian to appear and answer in like manner as a guardian for an infant defendant in an action at law may be appointed.

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Costs or alimony during
pendency of
libel.
1851, 82, § 1.
1855, 65; 137, § 6.
G. S. 107, § 22.
P. S. 146, § 15.

SECTION 14. The court may require the husband to pay into court for the use of the wife during the pendency of the libel an amount which may enable her to maintain or defend the libel, although exceeding the taxable costs; and may require him to pay to the wife alimony during the pendency of the libel.

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6 Gray, 341.

147 Mass. 159.

161 Mass. 111.

Protection of
personal liberty
of wife during
pendency.
1820, 56, § 1.

SECTION 15. The court sitting in any county may, upon the petition of the wife, prohibit the husband from imposing any restraint upon her personal liberty during the pendency of the libel.

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R. S. 76, § 24.

G. S. 107, § 31.

P. S. 146, § 16.

Custody of
children during
pendency.
1820, 56, § 1.
R. S. 76, § 25.
G. S. 107, § 32.
P. S. 146, § 17.

SECTION 16. The court may in like manner, upon the application of either party, make such order relative to the care and custody of the minor children of the parties during the pendency of the libel as it may consider expedient and for the benefit of the children.

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Continuance of
libel, and orders
for temporary
separation,
etc.

SECTION 17. The court may, without entering a decree of divorce, cause the libel to be continued upon the docket from time to time, and during such continuance may make orders and decrees

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4 relative to a temporary separation of the parties, the separate
 5 maintenance of the wife and the custody and support of minor
 6 children. Such orders and decrees may be changed or annulled as
 7 the court may determine, and shall, while they are in force, super-
 8 sede any order or decree of the probate court under the provisions
 9 of section thirty-three of chapter one hundred and fifty-three, and
 10 may suspend the right of said court to act under the provisions of
 11 said section.

1881, 234, § 3.
 P. S. 146, § 18.
 160 Mass. 232.

1 SECTION 18. Decrees of divorce shall in the first instance be
 2 decrees nisi, and shall become absolute after the expiration of six
 3 months from the entry thereof, unless the court before the expira-
 4 tion of said period, for sufficient cause, upon application of any
 5 party interested, otherwise orders.

1882, 223.

1893, 194, 280.

157 Mass. 503.

168 Mass. 228.

Decrees of di-
 vorce to be
 entered nisi.
 1867, 222, § 1.
 1870, 404, § 3.
 1873, 371, § 2.
 1877, 397, § 2.
 1881, 234, § 2.
 P. S. 146, § 19.

1 SECTION 19. A libel for divorce for desertion shall not be de-
 2 feated by a temporary return or other act of the libellee if the court
 3 finds that such return or other act was not made or done in good
 4 faith, but with the intent to defeat such libel.

P. S. 146, § 20.

Libel for deser-
 tion not to be
 defeated by
 temporary
 return.
 1855, 137, § 8.
 G. S. 107, § 8.

RESUMPTION OF FORMER NAME BY WIFE.

1 SECTION 20. The court upon granting a divorce to a woman
 2 may allow her to resume her maiden name or the name of a
 3 former husband.

G. S. 107, § 23.

P. S. 146, § 21.

Resumption of
 former name
 by wife.
 1849, 141.

RIGHT TO MARRY AGAIN.

1 SECTION 21. After a decree of divorce has become absolute,
 2 either party may marry again as if the other were dead, except that
 3 the party from whom the divorce was granted shall not marry within
 4 two years after the decree has become absolute.

1864, 216.
 1873, 371, § 4.

1881, 234, § 4.
 P. S. 146, § 22.

113 Mass. 458.
 122 Mass. 3.

126 Mass. 34.
 152 Mass. 533.

Remarriage of
 divorced par-
 ties.
 1841, 83.
 1853, 349.
 1855, 137, § 9;
 426.
 G. S. 107, § 25.

EFFECT OF DIVORCE ON LEGITIMACY OF CHILDREN.

1 SECTION 22. A divorce for adultery committed by the wife shall
 2 not affect the legitimacy of the issue of the marriage, but such legit-
 3 imacy, if questioned, shall be tried and determined according to the
 4 course of the common law.

G. S. 107, § 27.

P. S. 146, § 23.

Divorce for
 adultery by
 wife not to af-
 fect legitimacy
 of issue.
 1785, 69, § 6.
 R. S. 76, § 20.

EFFECT OF DIVORCE ON RIGHTS TO PROPERTY.

1 SECTION 23. Upon a divorce for adultery committed by the
 2 wife, her title to her separate real and personal property during her
 3 life shall not be affected, except that the court may decree to the
 4 husband so much of such property as it considers necessary for the
 5 support of the minor children of the marriage who may have been
 6 decreed to the husband's custody; and if the wife afterward con-
 7 tracts a lawful marriage, the interest of the divorced husband in
 8 the wife's separate real and personal property, after her death, shall
 9 cease, except in so much thereof as may have been decreed to him
 10 as herein provided.

Effect of
 divorce for
 adultery of
 wife upon her
 separate prop-
 erty.
 1877, 178, § 5.
 P. S. 146, § 27.

No dower to wife after divorce, except, etc.
1785, 69, § 5.
R. S. 76, § 32;
102, § 4.
G. S. 107, § 38;
135, § 29.
1870, 404, § 4.
P. S. 146, § 28;
174, § 13.

SECTION 24. After a divorce, a wife shall not be entitled to dower in the land of her husband, unless, after a decree of divorce nisi granted upon the libel of the wife, the husband dies before such decree is made absolute, except that, if the divorce was for the cause of adultery committed by the husband or because of his sentence to confinement at hard labor, she shall be entitled to her dower in the same manner as if he were dead.

13 Mass. 230.

14 Mass. 219.

2 Allen, 45.

110 Mass. 463.

CARE AND SUPPORT OF CHILDREN.

Care and maintenance of minor children.
1820, 56, § 1.
R. S. 76, § 26.
1853, 23, § 1.
G. S. 107, §§ 33, 48.
1873, 371, § 7.
P. S. 146, § 29.
152 Mass. 16.

SECTION 25. Upon a decree of divorce, or upon petition at any time after such decree, the court may make such decree as it considers expedient relative to the care, custody and maintenance of the minor children of the parties, and may determine with which of the parents the children or any of them shall remain; and afterward may from time to time, upon the petition of either parent, revise and alter such decree or make a new decree, as the circumstances of the parents and the benefit of the children may require.

— when divorce obtained out of commonwealth.
1842, 83, § 1.
G. S. 107, § 34.
P. S. 146, § 30.
156 Mass. 27.

SECTION 26. If, after a divorce has been decreed in another state or country, minor children of the marriage are inhabitants of this commonwealth, the superior court, upon the petition of either parent or of a next friend in behalf of the children, after notice to both parents, may make like decrees relative to their care, custody, education and maintenance as if the divorce had been decreed in this commonwealth.

Children not to be removed from commonwealth.
1842, 83, § 2.
G. S. 107, § 35.
P. S. 146, § 31.

SECTION 27. A minor child of divorced parents who is a native of or has resided five years within this commonwealth and over whose custody and maintenance the superior court has jurisdiction shall not, if of suitable age to signify his consent, be removed out of this commonwealth without such consent, or, if under that age, without the consent of both parents, unless the court upon cause shown otherwise orders. The court, upon application of any person in behalf of such child, may require security and may issue writs and processes to effect the purposes of this and the two preceding sections.

Custody of children.
1855, 131, § 7.
G. S. 107, § 37.
P. S. 146, § 32.
151 Mass. 349.

SECTION 28. In making an order or decree relative to the custody of children pending a controversy between their parents, or relative to their final possession, the rights of the parents shall, in the absence of misconduct, be held to be equal, and the happiness and welfare of the children shall determine their custody or possession.

GENERAL POWERS OF COURT.

Proceedings under this chapter.
1785, 69, § 8.
1820, 56, § 1.
R. S. 76, § 38.
G. S. 107, § 53.
P. S. 146, § 33.
1887, 332, § 1.
107 Mass. 428.
109 Mass. 306.

SECTION 29. The superior court may, if the course of proceeding is not specially prescribed, hear and determine all matters coming within the purview of this chapter according to the course of proceeding in ecclesiastical courts or in courts of equity, and may issue process of attachment and of execution and all other proper and necessary processes.

150 Mass. 57.

161 Mass. 111.

- 1 SECTION 30. Upon a divorce, or upon petition at any time after
 2 a divorce, the superior court may decree alimony to the wife, or a
 3 part of her estate, in the nature of alimony, to the husband.
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|-----------------|---------------------------|----------------|----------------|----------------------------|
| 1844, 129. | G. S. 107, §§ 43, 44, 48. | 100 Mass. 365. | 147 Mass. 159. | Alimony.
1785, 69, § 5. |
| 1850, 100, § 3. | 1873, 371, § 7. | 107 Mass. 428. | 150 Mass. 92. | 1805, 57. |
| 1853, 23, § 1. | P. S. 146, § 36. | 108 Mass. 314. | 161 Mass. 111. | 1810, 119. |
| 1857, 228, § 3. | 1887, 332, § 1. | 120 Mass. 390. | 168 Mass. 511. | 1828, 55. |
| | | | | R. S. 76, § 31. |
| | | | | 1898, 126, § 2. |

- 1 SECTION 31. The court may enforce decrees made for allowance,
 2 for alimony or for allowance in the nature of alimony, in the same
 3 manner as it may enforce decrees in equity.
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|----------------|----------------|---------------------|----------------|----------------|--------------------------------------------------------------------------------------|
| 105 Mass. 385. | 106 Mass. 499. | 130 Mass. 163, 189. | 134 Mass. 353. | 166 Mass. 226. | —enforcement
of decrees for.
1858, 47.
G. S. 107, § 45.
P. S. 146, § 37. |
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- 1 SECTION 32. When alimony or an annual allowance is decreed
 2 for the wife or children, the court may require sufficient security to
 3 be given for its payment according to the terms of the decree.
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| | —security for.
1820, 56, § 2.
R. S. 76, § 35.
G. S. 107, § 46.
P. S. 146, § 38. |
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- 1 SECTION 33. After a decree for alimony or an annual allow-
 2 ance for the wife or children, and also after a decree for the appoint-
 3 ment of trustees to receive and hold property in trust for the use of
 4 the wife or children as before provided, the court may, from time to
 5 time, upon the petition of either party, revise and alter its decree
 6 relative to the amount of such alimony or annual allowance and the
 7 payment thereof and also relative to the appropriation and payment
 8 of the principal and income of the property so held in trust, and
 9 may make any decree relative to said matters which it might have
 10 made in the original suit.
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| | —revision of
decree for, etc.
1785, 69, § 5.
1824, 138.
R. S. 76, § 36.
1853, 23, § 1.
G. S. 107, §§ 47,
48.
P. S. 146, § 39.
134 Mass. 353.
161 Mass. 111.
168 Mass. 511. |
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- 1 SECTION 34. In all proceedings under the provisions of this
 2 chapter, the court may award costs in its discretion.
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|-----------------|----------------|------------------|------------------|----------------|------------------------------------------------------|
| R. S. 76, § 37. | 1853, 23, § 2. | G. S. 107, § 49. | P. S. 146, § 40. | 161 Mass. 111. | —costs on peti-
tions for, etc.
1820, 56, § 2. |
|-----------------|----------------|------------------|------------------|----------------|------------------------------------------------------|

FOREIGN DIVORCES.

- 1 SECTION 35. A divorce decreed in another state or country
 2 according to the laws thereof by a court having jurisdiction of
 3 the cause and of both the parties, shall be valid and effectual in
 4 this commonwealth; but if an inhabitant of this commonwealth
 5 goes into another state or country to obtain a divorce for a cause
 6 which occurred here while the parties resided here, or for a cause
 7 which would not authorize a divorce by the laws of this common-
 8 wealth, a divorce so obtained shall be of no force or effect in this
 9 commonwealth.
- | | | | |
|---------------|----------------|---------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 157 Mass. 42. | 167 Mass. 474. | 176 Mass. 92. | Validity of for-
eign divorces.
R. S. 76, §§ 39,
40.
G. S. 107, §§ 54,
55.
P. S. 146, § 41.
2 Gray, 367.
97 Mass. 538.
115 Mass. 438,
449.
122 Mass. 3, 156.
129 Mass. 14.
136 Mass. 328.
154 Mass. 290. |
|---------------|----------------|---------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

CRIMINAL PROVISIONS.

- 1 SECTION 36. If persons who have been divorced from each other
 2 cohabit as husband and wife or live together in the same house, they
 3 shall be held to be guilty of adultery.
- | | | |
|------------------|------------------|---------------------------------------------------------------------------------------|
| G. S. 107, § 24. | P. S. 146, § 42. | Cohabitation
after divorce to
be adultery.
1785, 69, § 6.
R. S. 76, § 19. |
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- 1 SECTION 37. Whoever falsely personates another or wilfully and
 2 fraudulently procures a person to personate another, or fraudulently
 3 procures false testimony to be given, or makes a false or fraudulent
 4 return of service of process upon a libel for divorce or in any pro-
 5 ceeding connected therewith, shall be punished by a fine of not
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| | Penalty for
personation,
etc., in divorce
suits.
1873, 371, § 1.
P. S. 146, § 43. |
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more than one thousand dollars or by imprisonment for not more 6
than two years. 7

Penalty for
procuring
unlawful
divorce.
1886, 342.

SECTION 38. Whoever knowingly procures or obtains or assists 1
another to procure or obtain any false, counterfeit or fraudulent 2
divorce or decree of divorce, or any divorce or decree of divorce 3
from a court of another state for or in favor of a person who at the 4
time of making application therefor was a resident of this common- 5
wealth, such court not having jurisdiction to grant such decree, 6
shall be punished by a fine of not more than two hundred dollars 7
or by imprisonment for not more than six months. 8

— for adver-
tising to pro-
cure divorces.
1887, 320.

SECTION 39. Whoever, not being duly admitted as an attorney- 1
at-law in this commonwealth, writes, prints or publishes, or solicits 2
another to write, print or publish, any notice, circular or advertise- 3
ment soliciting employment in the business of procuring divorces 4
or offering inducements for the purpose of procuring such employ- 5
ment shall be punished as provided in the preceding section. 6

— for unlaw-
fully issuing
certificates of
divorce.
1891, 59.

SECTION 40. Whoever, except in compliance with an order of a 1
court of competent jurisdiction, gives, signs or issues any writing 2
which purports to grant a divorce to persons who are husband and 3
wife according to the laws of this commonwealth or which purports 4
to be a certificate that a divorce has been granted to such persons 5
shall be punished by a fine of not more than one thousand dollars 6
or by imprisonment in the jail for not more than three years, or by 7
both such fine and imprisonment. 8

Notice to dis-
trict attorney
of criminal
offences.
1881, 234, § 1.
P. S. 146, § 44.

SECTION 41. If a divorce is granted for a cause which con- 1
stitutes a crime, committed within this commonwealth and within 2
the time provided by law for making complaints and finding indiet- 3
ments therefor, the court which grants the divorce may in its dis- 4
cretion cause notice of such facts to be given by the clerk of the 5
court to the district attorney for the county in which such crime 6
was committed, with a list of the witnesses proving such crime 7
and any other information which the court may consider proper, 8
and thereupon the district attorney shall cause complaint therefor 9
to be made before a magistrate having jurisdiction thereof, or 10
shall present the evidence thereof to the grand jury. 11

STATISTICS OF DIVORCE.

Returns of
statistics of
divorce.
1882, 194, §§ 1, 2.

SECTION 42. The clerks of the courts and the clerk of the supe- 1
rior court for civil business in the county of Suffolk shall annually, 2
in February, make returns for the last preceding calendar year to 3
the secretary of the commonwealth, upon suitable blank forms which 4
shall be provided by him, of the number of libels pending at the 5
beginning of the year, the number of libels filed within the year, 6
the number of divorces granted, the number of divorces refused, the 7
number of libels contested, the number of libels uncontested, 8
the alleged cause for divorce in each case, the sex of the libellant 9
and the length of time the parties have been married, and the 10
number of cases in which notice has been given to the district 11
attorney for prosecution under the provisions of the preceding 12

13 section and the crime for which divorce has been granted in such
14 cases.

1 SECTION 43. The secretary shall annually prepare from said Publication of
2 returns abstracts and tabular statements of the facts relative to abstracts of
3 divorcees for each county, and embody them, with necessary analyses, returns.
4 in his annual report to the general court relative to the registry of 1882, 194, § 3.
5 births, marriages and deaths.

Publication of
abstracts of
returns.
1882, 194, § 3.

CHAPTER 153.

OF CERTAIN RIGHTS AND LIABILITIES OF HUSBAND AND WIFE.

SECTIONS 1-14. — General Provisions.

SECTIONS 15-25. — Provisions if Husband or Wife is under Disability.

SECTIONS 26-28. — Marriage Contracts.

SECTIONS 29, 30. — Married Women Coming from other States, etc.

SECTIONS 31-37.—Married Women Abandoned by their Husbands, etc.

GENERAL PROVISIONS.

1 SECTION 1. The real and personal property of a woman shall Married
2 upon her marriage remain her separate property, and a married woman may
3 woman may receive, receipt for, hold, manage and dispose of control sepa-
4 property, real and personal, in the same manner as if she were sole. rate prop-
5 But no conveyance by a married woman of real property shall, ex- erty.
6 cept as provided in section thirty-six, extinguish or impair her hus- 1845, 208, § 3.
7 band's tenancy by the curtesy by statute or his rights to curtesy 1846, 209, § 1.
8 which existed at the time this chapter takes effect in such property 1855, 304, §§ 1, 3.
9 unless he joins in the conveyance or otherwise releases his said 1857, 249, §§ 1, 2.
10 rights. G. S. 108, §§ 1, 3, 6, 10.
1864, 198.
1874, 184, § 1.
P. S. 147, § 1.
1889, 204.
114 Mass. 550.
117 Mass. 62.

128 Mass. 169, 269. 167 Mass. 390.

Married
woman may
control sepa-
rate property.
1845, 208, § 3.
1846, 209, § 1.
1855, 304, §§ 1, 3.
1857, 249, §§ 1, 2.
G. S. 108, §§ 1,
3, 6, 10.
1864, 198.
1874, 184, § 1.
P. S. 147, § 1.
1889, 204.
114 Mass. 550.
117 Mass. 62.

1 SECTION 2. A married woman may make contracts, oral and —may con-
2 written, sealed and unsealed, in the same manner as if she were tract.
3 sole, except that she shall not be authorized hereby to make con- 1855, 304, § 3.
4 tracts with her husband. 1857, 249, § 2.
G. S. 108, § 3.
1863, 165.
1869, 304.

— may con-
tract.
1855, 304, § 3.
1857, 249, § 2.
G. S. 108, § 3.
1863, 165.
1869, 304.
1874, 184, § 1.

P. S. 147, § 2.	99 Mass. 562.	130 Mass. 407.	145 Mass. 339.
10 Cush. 550.	114 Mass. 520.	135 Mass. 87.	146 Mass. 517.
8 Gray, 542.	124 Mass. 108.	139 Mass. 202.	150 Mass. 578.
8 Allen, 581.	125 Mass. 28.	140 Mass. 63, 202, 521.	158 Mass. 388.
11 Allen, 345.	126 Mass. 297.	141 Mass. 223.	168 Mass. 471.

SECTION 3. The provisions of the two preceding sections shall not authorize a husband or a wife to transfer property one to the other, except that a wife may by gift from her husband acquire as her separate property wearing apparel, articles of personal ornament and articles necessary for her personal use, to a value of not more than two thousand dollars: but this exception shall not make valid a gift by a husband in fraud of his creditors.

Transfer be-
tween husband
and wife
forbidden.
1857, 249, § 5.
G. S. 108, § 10.
1874, 184, § 1.
1879, 133.
P. S. 147, § 3.
1884, 132, § 1.
12 Allen, 107,
116.

114 Mass. 167.	119 Mass. 596.	128 Mass. 169.	146 Mass. 25.
116 Mass. 490.	126 Mass. 113.	134 Mass. 138.	158 Mass. 342.

1 SECTION 4. Work and labor performed by a married woman Labor of mar-
2 for a person other than her husband and children shall, unless there ried woman.
3 is an express agreement on her part to the contrary, be presumed 1846, 209.
4 to be performed on her separate account. 1855, 304, § 7.
G. S. 108, §§ 3, 6.
1874, 184, § 1.
P. S. 147, § 1.

Labor of married woman.
1846, 209.
1855, 304, § 7.
G. S. 108, §§ 3, 6.
1874, 184, § 1.
P. S. 147, § 4.

14 Gray, 389. 1 Allen, 258. 131 Mass. 533. 165 Mass. 100.

Married woman may be executrix, etc. 1
 1837, 171, § 1. 2
 G. S. 103, § 25. 3
 1869, 409. 4
 1874, 184, § 4. husband. P. S. 147, § 5.

— may sue and be sued. 1
 1845, 208, § 5. 2
 1855, 304, §§ 2, 4. 3
 1857, 249, § 3. not authorize suits between husband and wife. 1874, 184, § 3.
 G. S. 108, § 8. P. S. 147, § 7. 10 Allen, 512. 118 Mass. 58. 155 Mass. 136.
 1871, 312. 6 Gray, 562. 115 Mass. 115. 120 Mass. 89. 173 Mass. 214.

— not liable for husband's debts. 1
 1855, 304, §§ 1, 6. 2
 G. S. 108, §§ 1, 7. 3
 SECTION 7. A married woman shall not be liable for the debts of her husband, nor shall her property be liable to be taken on an execution against him, except as provided in section ten. P. S. 147, § 8.

Husband not liable for wife's debts. 1
 1855, 304, § 2. 2
 G. S. 108, § 8. 3
 1871, 312. SECTION 8. A husband shall not be liable upon a cause of action which originated against his wife prior to their marriage, nor to pay a judgment recovered against her, except as provided in section ten. P. S. 147, § 9. 10 Allen, 238. 118 Mass. 58. 120 Mass. 89.

— or on certain contracts of wife after marriage. 1
 1855, 304, § 7. 2
 1857, 249, § 6. 3
 G. S. 108, § 5. 4
 P. S. 147, § 10. 5
 SECTION 9. Contracts made by a married woman relative to her separate property, trade, business, labor or services shall not, except as provided in the following section, bind her husband nor render him or his property liable therefor; but she and her separate property shall be liable on such contracts in the same manner as if she were sole. 6

Separate business certificate. 1
 1862, 198. 2
 1881, 64, §§ 1, 3. 3
 P. S. 147, § 11. 4
 1898, 416. 5
 1 Allen, 258. 6
 108 Mass. 50. 7
 109 Mass. 289. 8
 112 Mass. 259. 9
 114 Mass. 77. 10
 126 Mass. 332, 411. 11
 129 Mass. 296. 12
 138 Mass. 83. 13
 194. 14
 150 Mass. 82, 275. 15
 163 Mass. 255. 16
 170 Mass. 142. 17
 173 Mass. 90. 18
 SECTION 10. If a married woman does or proposes to do business on her separate account, she shall cause to be recorded in the clerk's office of the city or town in which she does or proposes to do such business a certificate stating her name and that of her husband, the nature of the business and the place where it is or is proposed to be carried on, giving, if practicable, the street and the number on the street, and the name, which shall not be her husband's, under which she proposes to carry on business: and if the nature of the business or the place where or the name under which it is carried on is changed, a new certificate shall be recorded accordingly. If she fails to cause such certificates to be recorded her husband may cause them to be recorded; but if such certificates are not so recorded by either husband or wife, the personal property employed in such business shall be liable to be attached as the property of the husband and to be taken on execution against him, and the husband shall be liable upon all contracts lawfully made in the prosecution of such business in the same manner and to the same extent as if such contracts had been made by himself. The provisions of this section shall not, however, affect the rights of any person under any certificate filed or recorded prior to the first day of August in the year eighteen hundred and ninety-eight. 19
 20
 21

Record of certificates. 1
 1881, 64, § 2. 2
 P. S. 147, § 12. 3
 150 Mass. 75. 4
 SECTION 11. A city or town clerk shall, upon payment of twenty-five cents, record in a book kept for the purpose the certificate required by the provisions of the preceding section, noting in such book and on the certificate itself the time when it is received, and a certificate shall be considered as recorded at the time when it is 5

6 left for record. The clerk shall keep an index of all certificates so
7 recorded.

1 SECTION 12. The probate court may, upon the petition of a
2 married woman who has separate property, appoint a trustee to
3 hold the same in trust for her, to whom she may thereupon convey
4 it upon such trusts and to such uses as she may declare. The
5 trustee may prosecute and defend all actions relative to such prop-
6 erty brought by or against her; and the property in his hands shall
7 be liable to be attached or taken on execution in any such action.

Trustee for
married
woman's sepa-
rate estate.
1845, 208, § 8.
G. S. 108, § 4.
P. S. 147, § 13.
1887, 332, § 2.
10 Allen, 127.
133 Mass. 175.

1 SECTION 13. If real property of a married woman is taken for
2 a railroad, a way or any other public use, or is damaged by the lay-
3 ing out of a railroad, way or by any other public works, the dam-
4 ages or compensation awarded therefor may be so invested and dis-
5 posed of as to secure to her the same rights in the amount so
6 awarded and the income thereof as she would have had in the real
7 property and the income thereof if such real property had not been
8 so taken or damaged. The probate court shall have concurrent
9 jurisdiction in equity, upon the petition of such woman, to hear and
10 determine it and to enforce and secure her rights.

Disposition of
damages for
land of mar-
ried woman
taken for rail-
road, etc.
1835, 146.
R. S. 77, § 17.
G. S. 108, § 14.
P. S. 147, § 14.
14 Pick. 108.

1 SECTION 14. The provisions of the thirteen preceding sections
2 shall not invalidate a marriage settlement or contract.

G. S. 108, § 10. 1874, 184, § 6. P. S. 147, § 15. 136 Mass. 342.

Marriage
settlements not
affected.
1855, 304, § 9.

PROVISIONS IF HUSBAND OR WIFE IS UNDER DISABILITY.

1 SECTION 15. If the guardian of a married man is licensed to
2 sell real property of his ward, the wife of the ward may join with
3 the guardian in the conveyance, and thereby release her right of
4 dower and the estate or right of homestead in the granted property,
5 in like manner as she might have done by joining in a conveyance
6 thereof made by her husband if he had been under no legal disability.

Release of
dower by wife
of ward.
1823, 146, § 2.
R. S. 77, § 14.
G. S. 108, § 11.
P. S. 147, § 16.

1 SECTION 16. If such guardian is licensed to sell the interest of
2 the ward in any real property of his wife, the wife may join with the
3 guardian in the conveyance, and thereby convey all her estate and
4 interest in the granted property, in like manner as she might have
5 done by a conveyance thereof made jointly with her husband, if
6 he had been under no legal disability.

Sale of her
real property.
1823, 146, § 1.
R. S. 77, § 15.
G. S. 108, § 12.
P. S. 147, § 17.

1 SECTION 17. If the wife so releases her right of dower or an
2 estate of homestead, or so conveys her own estate, the proceeds of
3 the sale may be so invested and disposed of as to secure to her, and
4 to the minor children of the owner if it is an estate of homestead,
5 the same rights in the principal and the income thereof as she or
6 they would have had therein if it had not been sold. An agree-
7 ment made between her and the guardian for securing and dispos-
8 ing of the proceeds or of any part thereof for the purpose aforesaid,
9 if approved by the probate court for the county in which the
10 guardian was appointed or by the supreme court of probate upon
11 appeal or, in default of an agreement between her and the guardian
12 approved as aforesaid, an order therefor made by the probate court
13 shall be valid and binding on all persons interested in the granted

Disposition of
proceeds of
such sales.
1823, 146, § 1.
R. S. 77, § 16.
G. S. 108, § 13.
P. S. 147, § 18.

property or in said proceeds, and may be enforced by the court or 14
by an action at law. 15

Joinder of wife
or husband of
ward with
guardian in
making parti-
tion.
1830, 54.
R. S. 77, § 20.
G. S. 108, § 15.
P. S. 147, § 19.

SECTION 18. The wife of a man who is under guardianship may 1
join with his guardian, and the guardian of a woman may join with 2
her husband, in making partition of her real property which is held 3
in joint tenancy or in common, and they may make any release or 4
other conveyance necessary or proper for that purpose, in like 5
manner as the parties might do if neither of them were under legal 6
disability. 7

Release of
dower or
curtesy of
insane person.
1856, 169, § 3.
1857, 298, § 10.
G. S. 108, § 20.
P. S. 147, § 20.
1886, 245, § 1.
1890, 105.
1899, 284, § 1.

SECTION 19. The husband or wife of an insane person who de- 1
sires to convey his or her real property absolutely or by mortgage 2
may file a petition in the probate court describing such real prop- 3
erty and praying that the dower of the wife or an estate of home- 4
stead or a tenancy by the curtesy at common law or by statute of 5
the husband therein may be released and stating the facts and rea- 6
sons why the prayer of the petition should be granted. The court 7
may, after notice and a hearing, by a decree authorize the guardian 8
of the insane person to make the release by joining in any deed or 9
deeds, mortgage or mortgages of the whole or a part of said real 10
property which is or are made within five years after said decree by 11
the husband or wife of the insane person or by a trustee for such 12
husband or wife. 13

Reservation
for husband of
portion of
proceeds.
1886, 245, § 2.
1899, 284, § 2.
1900, 450, § 5.
1901, 461.

SECTION 20. If the guardian of an insane husband is authorized 1
under the provisions of the preceding section to release such ten- 2
ancy by the curtesy and the probate court finds that a portion of 3
the proceeds of such real property, or of an amount loaned on 4
mortgage thereof, should be reserved for the use of such ward, it 5
may order that a certain portion, not exceeding one-third of the 6
net amount if it is in respect of the tenancy by the curtesy by 7
statute, of the proceeds or amount actually realized from such sale 8
or mortgage, exclusive of any encumbrance then existing on the 9
property, shall be set aside and paid over to such guardian who 10
shall invest and hold it for the benefit of the husband during his life 11
if he survives his wife. The income of such portion shall be re- 12
ceived and enjoyed by the wife during the life of her husband, or 13
until otherwise ordered by the court for cause. If she survives 14
him the principal shall upon his decease be paid over to her, but if 15
she does not survive him, to her heirs, executors or administrators. 16

— for wife of
portion of
proceeds upon
release of
dower.
1856, 169, § 4.
G. S. 108, § 21.
P. S. 147, § 21.

SECTION 21. If the guardian of an insane wife is authorized 1
under the provisions of section nineteen to release the dower of his 2
ward, and the probate court finds that a portion of the proceeds of 3
such real property, or of an amount loaned on mortgage thereof, 4
should be reserved for the use of such ward, it may order that a 5
certain portion, not exceeding one-third of the net amount of the 6
proceeds or amount actually realized from such sale or mortgage, 7
exclusive of any encumbrance then existing on the property, shall 8
be set aside and paid over to such guardian, who shall invest and 9
hold it for the benefit of the wife during her life if she survives her 10
husband. The income of such portion shall be received and enjoyed 11
by the husband during the life of his wife, or until otherwise or- 12

dered by the court for cause. If he survives her the principal shall upon her decease be paid over to him, but if he does not survive her, to his heirs, executors or administrators.

SECTION 22. If the guardian of an insane wife is authorized under the provisions of section nineteen to release an estate of homestead, and the probate court finds that a portion of the proceeds of the real property sold, or of an amount loaned on mortgage thereof, should be reserved for the use of the ward, it may order that a certain portion, not exceeding eight hundred dollars, shall be set aside and paid over to such guardian to be invested in a homestead, and held by him for the benefit of his ward, if she survives her husband; the rent or use thereof to be received and enjoyed by the husband during the life of his wife, or until otherwise ordered by the court for cause; and the homestead to be his, and to be conveyed to him by said guardian, if he survives her.

Reservation for wife upon release of homestead.
1857, 298, § 11.
G. S. 108, § 22.
P. S. 147, § 22.

SECTION 23. If the husband or wife of an insane person conveys real property in trust without a power of revocation and makes a provision therein for the insane husband or wife, respectively, which the probate court, upon petition, after notice and a hearing, finds is sufficient in lieu of curtesy or dower, the trustee may convey such real property free from all right of curtesy or dower.

Conveyance if provision in lieu of curtesy or dower.
1856, 169, § 5.
G. S. 108, § 23.
P. S. 147, § 23.

SECTION 24. The court, under the provisions of the preceding section, may find that the provision for the husband or wife is sufficient in lieu of curtesy or dower either in the whole or in particular portions of the real property of the husband or wife and thereupon the guardian of such insane husband or wife may be authorized to release the curtesy or dower in the whole or in particular portions thereof.

Same subject.
1856, 169, § 6.
G. S. 108, § 24.
P. S. 147, § 24.

SECTION 25. Proceedings under the provisions of the six preceding sections shall, if the husband or wife of such insane person is an inhabitant of this commonwealth, be in the county in which he or she resides; otherwise, in a county in which any of his or her real property is situated; and a certified copy of all final orders or decrees in such proceedings shall be recorded in the registry of deeds in every county or district in which such real property is situated.

Venue of proceedings.
1856, 169, § 7.
G. S. 108, § 25.
P. S. 147, § 25.
1886, 245, § 3.

MARRIAGE CONTRACTS.

SECTION 26. At any time before a marriage, the parties may enter into a contract in writing, agreeing and providing that, after the marriage is solemnized, the whole or any designated part of the real or personal property or any right of action, of which either party may be seised or possessed at the time of the marriage, shall remain or become the property of the husband or wife, according to the terms of the contract. Such contract may limit to the husband or wife an estate in fee or for life in the whole or in any part of the property, and may designate any other lawful limitations. All such limitations shall take effect at the time of the marriage in like manner as if they had been contained in a deed conveying the property limited.

Ante-nuptial marriage contracts.
1845, 208, § 1.
G. S. 108, § 27.
P. S. 147, § 26.
8 Gray, 542.
128 Mass. 509.
148 Mass. 132.

Record of
contract and
description of
property.
1845, 208, § 2.
G. S. 108, § 28.
1867, 248.
P. S. 147, § 27.
4 Allen, 412.
100 Mass. 337.
169 Mass. 189.
175 Mass. 349.

SECTION 27. There shall be annexed to such contract a schedule of the property intended to be affected thereby, which shall contain a sufficiently clear description of the property to enable a creditor of the husband or wife to distinguish it from all other property; and such contract and schedule shall, either before the marriage or within ninety days thereafter, be recorded in the registry of deeds for the county or district in which the husband resides at the time of the record, or, if he is not a resident of this commonwealth, then in the registry of deeds for the county or district in which the wife resides at the time of the record, if it is made before the marriage, or in which she last resided, if made after the marriage. If the contract is not so recorded, it shall be void except as between the parties thereto and their heirs and personal representatives. It shall also be recorded in the registry of deeds for every county or district in which there is land to which it relates.

Marriage con-
tract of female
minor ward.
1869, 292.
P. S. 147, § 28.

SECTION 28. A female minor who has attained the age of eighteen years may join with her guardian in making such marriage contract, and for such purpose the guardian and ward may convey her real and personal property to trustees approved by the probate court having jurisdiction over said minor, to be held upon the trusts declared in such contract, and such conveyance shall have like effect as if said minor was of full age, and the guardian in the settlement of his accounts shall be allowed by the probate court for all property so conveyed to said trustees; and said court may require said trustees to give bond with sufficient sureties for the faithful performance of their trust.

MARRIED WOMEN COMING FROM OTHER STATES, ETC.

Rights of
woman coming
into common-
wealth without
her husband.
R. S. 77, § 18.
G. S. 108, § 29.
P. S. 147, § 29.
15 Mass. 31.

SECTION 29. If a married woman comes from another state or country into this commonwealth without her husband, who has never lived with her in this commonwealth, she shall have all the rights and powers which are given to married women by the preceding provisions of this chapter, and may transact business, make contracts, sue and be sued in her own name, and dispose of her property which may be found here, in like manner as if she were sole.

— of parties
married out of
common-
wealth, and
coming here
to reside.
R. S. 77, § 19.
1855, 304, § 8.
G. S. 108, § 30.
P. S. 147, § 30.

SECTION 30. If a husband and his wife, married in another state or country, come into this commonwealth, either at the same time or at different times, and reside here as husband and wife, she shall retain all property which she had acquired by the laws of any other state or country, or by a marriage contract or settlement made out of this commonwealth. Such residence together here shall have the same effect, relative to their subsequent rights and liabilities, as if they had married in this commonwealth at the beginning of such residence.

MARRIED WOMEN ABANDONED BY THEIR HUSBANDS, ETC.

Conveyance,
etc., of prop-
erty by mar-
ried woman
abandoned,
etc.

SECTION 31. The probate court, upon the petition of a married woman whose husband abandoning and not sufficiently maintaining her has absented himself from this commonwealth, or has been

4 sentenced to confinement in the state prison, may authorize her to
5 sell, convey, receive and receipt for her real and personal property,
6 any personal property which may have come to her husband by
7 reason of the marriage and remains in this commonwealth undis-
8 posed of by him or any personal property to which he is entitled
9 in her right, and to use and dispose of the same or the proceeds
10 thereof, during his absence or imprisonment, as if she were sole;
11 and the authority so granted shall continue until the husband re-
12 turns to this commonwealth and claims his marital rights, or is
13 discharged from prison.

1787, 32, § 1.
1833, 127.
R. S. 77, §§ 1-3,
5, 6, 12, 13.
G. S. 108, §§ 31,
33.
P. S. 147, § 31.
1887, 332, § 2.
12 Allen, 133.

1 SECTION 32. A petition mentioned in the preceding section may
2 be filed, heard and determined in the probate court in any county,
3 and notice thereon shall be given in the manner provided for
4 giving notice of libels for divorce when the libellee is out of this
5 commonwealth.

Proceedings to
obtain
authority.
1787, 32, §§ 1, 3.
R. S. 77, § 11.
G. S. 108, § 35.
P. S. 147, § 32.
1887, 332, § 2.

1 SECTION 33. If a husband fails, without just cause, to provide
2 suitable support for his wife, or deserts her, or if the wife, for justi-
3 fiable cause, is actually living apart from her husband, the probate
4 court may, upon her petition or, if she is insane, upon the petition
5 of her guardian or next friend, prohibit the husband from imposing
6 any restraint on her personal liberty during such time as the court
7 shall by its order direct or until the further order of the court
8 thereon; and, upon the application of the husband or wife or of her
9 guardian, the court may make further orders relative to the support
10 of the wife and the care, custody and maintenance of the minor
11 children of the parties, may determine with which of their parents
12 the children or any of them shall remain and may, from time to
13 time, upon a similar application, revise and alter such order or
14 make a new order or decree, as the circumstances of the parents or
15 the benefit of the children may require.

Orders for
support, etc.,
of wife
deserted.
1874, 205.
1878, 199, § 1.
1880, 64, § 1.
P. S. 147, § 33.
120 Mass. 320.
130 Mass. 163.
136 Mass. 187.
138 Mass. 106.
140 Mass. 560.
144 Mass. 278.
146 Mass. 40.
150 Mass. 111.
154 Mass. 262.
159 Mass. 91,
474.
160 Mass. 232.
161 Mass. 58.
176 Mass. 229.

1 SECTION 34. A petition under the provisions of the preceding
2 section may be brought in the county in which either of the parties
3 lives, except that if the petitioner has left the county in which the
4 parties have lived together and the respondent still lives therein,
5 the petition shall be brought in that county.

Venne of
petition.
1881, 33.
P. S. 147, § 34.

1 SECTION 35. Upon such petition, an attachment of the husband's
2 property may be made as upon a libel for divorce: and the pro-
3 visions of sections fourteen, twenty-nine and thirty-one of chapter
4 one hundred and fifty-two shall apply to proceedings upon such
5 petition, so far as appropriate.

Attachment of
husband's
property in
such case.
1878, 199, § 2.
1879, 31.
P. S. 147, § 35.
141 Mass. 432.

150 Mass. 92.

153 Mass. 38.

163 Mass. 530.

1 SECTION 36. If a court having jurisdiction has entered a decree
2 that a married woman has been deserted by her husband or is living
3 apart from him for justifiable cause, she may convey her real prop-
4 erty in the same manner and with the same effect as if she were
5 sole; and the surviving husband shall not be entitled under the pro-
6 visions of section sixteen of chapter one hundred and thirty-five to
7 waive the provisions of a will made by her.

Conveyance
and will of
married
woman living
apart.
1884, 301.
1885, 255, § 1.

Support, etc.,
of children of
parents living
separately.
1856, 24.
G. S. 107, §§ 36,
37.
P. S. 147, § 36.
1887, 332, § 2.

SECTION 37. If the parents of minor children live separately, the probate court shall have the same power, upon the petition of either parent, to make decrees relative to their care, custody, education and maintenance, as relative to children whose parents are divorced; and shall determine which of the parents of such children shall be entitled to such custody in accordance with the law relative to the custody of children whose parents have been divorced.

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CHAPTER 154.

OF THE ADOPTION OF CHILDREN AND CHANGE OF NAMES.

SECTIONS 1-11. — Adoption of Children.

SECTIONS 12-14. — Change of Names.

ADOPTION OF CHILDREN.

Who may petition for leave to adopt a child.
1851, 324, §§ 1, 4.
G. S. 110, § 1.
1871, 310, § 1.
1876, 213, §§ 1, 10, 11.
P. S. 148, § 1.
124 Mass. 592.
137 Mass. 346.
171 Mass. 99.

SECTION 1. A person of full age may petition the probate court in the county in which he resides for leave to adopt as his child another person younger than himself, unless such other person is his or her wife or husband, or brother, sister, uncle or aunt, of the whole or half blood. If the petitioner has a husband or wife living, who is competent to join in the petition, such husband or wife shall join therein, and upon adoption the child shall in law be the child of both. If a person who is not an inhabitant of this commonwealth desires to adopt a child who resides here, the petition may be made to the probate court in the county in which the child resides.

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Written consent of certain persons required.
1851, 324, §§ 2, 3.
1852, 262.
1853, 31.
G. S. 110, §§ 2, 5.
1871, 310, §§ 2, 4.
1876, 213, § 2.
P. S. 148, § 2.
154 Mass. 378.

SECTION 2. A decree for such adoption shall not be made, except as hereinafter provided, without the written consent of the child, if it is above the age of fourteen years; of her husband, if she is a married woman; of the lawful parents, or surviving parent; of the parent having the lawful custody of the child, if the parents are divorced or are living separately; of the guardian of the child, if any; of the mother only of the child, if illegitimate; or of the person substituted for any of the above named by the provisions of this chapter. The fact of illegitimacy shall in no case appear upon the record. A person whose consent is hereby required shall not thereby be debarred from being the adopting parent. If the child has been previously adopted, the consent of the previous adopting parent shall also be required.

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Consent not required, when.
1833, 402.
1859, 61, § 1.
G. S. 110, § 3.
1871, 310, §§ 3, 6.
1872, 311, § 1.
1876, 213, §§ 3, 4.
P. S. 148, § 3.
1886, 101, § 4.
1898, 433, § 24.
137 Mass. 346.

SECTION 3. The consent of the persons named in the preceding section, other than the child or her husband, if any, shall not be required if the person to be adopted is of full age, nor shall the consent of any such person other than the child be required if such person is adjudged by the court hearing the petition to be hopelessly insane, or is imprisoned in the state prison or in a house of correction in this commonwealth under sentence for a term of which more than three years remain unexpired at the date of the petition; or if he has wilfully deserted and neglected to provide proper care and maintenance for such child for two years last preceding the date of

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11 the petition ; or if he has suffered such child to be supported for
 12 more than two years continuously, prior to the petition, by an in-
 13 corporated charitable institution or as a pauper by a city or town
 14 or by the commonwealth ; or if he has been sentenced to imprison-
 15 ment for drunkenness upon a third conviction within one year and
 16 neglects to provide proper care and maintenance for such child ; or
 17 if such person has been convicted of being a common night walker
 18 or a lewd, wanton and lascivious person, and neglects to provide
 19 proper care and maintenance for such child. A giving up in writing
 20 of a child, for the purpose of adoption, to an incorporated charitable
 21 institution shall operate as a consent to any adoption subsequently
 22 approved by such institution. Notice of the petition shall be given
 23 to the state board of charity, if the child is supported as a pauper
 24 by a city or town or by the commonwealth.

1 SECTION 4. If the written consent required by the provisions of
 2 the two preceding sections is not submitted to the court with the
 3 petition, the court shall order notice by personal service on the
 4 parties of a copy of the petition and order thereon, or, if they are
 5 not found within this commonwealth, by publication of the petition
 6 and order once in each of three successive weeks in such newspaper
 7 as the court orders, the last publication to be seven days at least
 8 before the time appointed for the hearing, and the court may require
 9 additional notice and consent.

Notice to be given, when.
 1859, 61, § 2.
 G. S. 110, § 4.
 1864, 213, § 1.
 1871, 310, § 5.
 1872, 311, § 3.
 1876, 213, § 5.
 P. S. 148, § 4.
 137 Mass. 84,
 346.

1 SECTION 5. If, after such notice, a person whose consent is re-
 2 quired does not appear and object to the adoption, the court may
 3 act upon the petition without his consent, subject to his right of
 4 appeal, or it may appoint a guardian ad litem with power to give
 5 or withhold consent. P. S. 148, § 5. 115 Mass. 262. 137 Mass. 346.

Persons not ap-
 pearing, to be
 held to consent.
 1851, 324, § 2.
 1853, 31.
 G. S. 110, § 2.
 1864, 213, § 3.
 1876, 213, § 6.

1 SECTION 6. If the court is satisfied of the identity and relations
 2 of the persons, and that the petitioner is of sufficient ability to bring
 3 up the child and provide suitable support and education for it, and
 4 that the child should be adopted, it shall make a decree, by which,
 5 except as regards succession to property, all rights, duties and other
 6 legal consequences of the natural relation of child and parent shall
 7 thereafter exist between the child and the petitioner and his kin-
 8 dred, and shall, except as regards marriage, incest or cohabitation,
 9 terminate between the child so adopted and his natural parents and
 10 kindred or any previous adopting parent ; but such decree shall not
 11 place the adopting parent or adopted child in any relation to any
 12 person, except each other, different from that before existing as
 13 regards marriage, rape, incest or other sexual crime committed by
 14 either or both. The court may also decree such change of name as
 15 the petitioner may request. If the person so adopted is of full age,
 16 he shall not be freed by such decree from the obligations imposed
 17 by the provisions of section ten of chapter eighty-one.

Decree of court
 and its effect.
 1851, 324, §§ 5-7.
 G. S. 110, §§ 6-8.
 1871, 310, §§ 7, 9.
 1876, 213, §§ 7,
 10.
 P. S. 148, § 6.
 140 Mass. 568.

1 SECTION 7. A person who is adopted in accordance with the pro-
 2 visions of this chapter shall take the same share of the property which
 3 the adopting parent could dispose of by will as he would have taken
 4 if born to such parent in lawful wedlock, and he shall stand in re-

Rights of
 adopted child
 as to succe-
 sion to prop-
 erty.
 1851, 324, § 6.

G. S. 110, § 7.
1871, 310, § 8.
1876, 213, § 8.
P. S. 148, § 7.
144 Mass. 441.
148 Mass. 619.
153 Mass. 525.

gard to the legal descendants, but to no other of the kindred of such 5
adopting parent, in the same position as if so born to him. If the 6
person adopted dies intestate, his property acquired by himself or 7
by gift or inheritance from his adopting parent or from the kindred 8
of such parent shall be distributed according to the provisions of 9
chapters one hundred and thirty-three and one hundred and forty 10
among the persons who would have been his kindred if he had been 11
born to his adopting parent in lawful wedlock; and property re- 12
ceived by gift or inheritance from his natural parents or kindred 13
shall be distributed in the same manner as if no act of adoption had 14
taken place. The apportionment and distribution shall be ascer- 15
tained by the court. A person shall not by adoption lose his right 16
to inherit from his natural parents or kindred. 17

Rights of
adopted child
under wills,
trusts, etc.
1876, 213, § 9.
P. S. 148, § 8.
115 Mass. 262.
144 Mass. 441.

SECTION 8. The word "child", or its equivalent, in a grant, trust- 1
settlement, entail, devise or bequest shall include a child adopted 2
by the settlor, grantor or testator, unless the contrary plainly ap- 3
pears by the terms of the instrument; but if the settlor, grantor or 4
testator is not himself the adopting parent, the child by adoption 5
shall not have, under such instrument, the rights of a child born in 6
lawful wedlock to the adopting parent, unless it plainly appears to 7
have been the intention of the settlor, grantor or testator to include 8
an adopted child. 9

— In this com-
monwealth of a
child adopted
in another
state.
1876, 213, § 11.
P. S. 148, § 9.
129 Mass. 243.

SECTION 9. An inhabitant of another state, adopted as a child 1
in accordance with the laws thereof, shall upon proof of such fact 2
be entitled in this commonwealth to the same rights of succession 3
to property as he would have had in the state in which he was 4
adopted, except so far as such rights are in conflict with the pro- 5
visions of this chapter. 6

Effect of
second adop-
tion.
1876, 213, § 13.
P. S. 148, § 10.

SECTION 10. If the child has been previously adopted, all the 1
legal consequences of the former decree shall, upon a subsequent 2
adoption, determine, except so far as any interest in property may 3
have vested in the adopted child, and a decree to that effect shall 4
be entered on the records of the court. 5

Appeals.
1851, 324, § 8.
1859, 61, § 2.
G. S. 110, §§ 9,
10.
1871, 310, § 10.
1876, 213, § 12.
P. S. 148, § 11.
154 Mass. 574.

SECTION 11. The supreme judicial court may allow a parent, 1
who, upon a petition for adoption, had no personal notice of the 2
proceedings before the decree, to appeal therefrom within one year 3
after actual notice thereof, if he first makes oath that he was not, at 4
the time of filing such petition, undergoing imprisonment as speci- 5
fied in section three or that, if so imprisoned, he has since been 6
pardoned on the ground of innocence or has had his sentence re- 7
versed. 8

CHANGE OF NAMES.

Petitions for
change of
name.
1851, 256, § 1.
1854, 24.
G. S. 110, §§ 11,
13.
P. S. 148, § 12.

SECTION 12. A petition for the change of name of a person may 1
be heard by the probate court in the county in which the petitioner 2
resides. No change of the name of a person, except upon the adop- 3
tion of a child under the provisions of this chapter or upon the 4
marriage or divorce of a woman, shall be lawful unless made by 5
said court for a sufficient reason consistent with public interests and 6
satisfactory to it. 7

1 SECTION 13. The court shall, before decreeing a change of name, Notice and
 2 require public notice of the petition to be given, and any person certificate.
 3 may be heard thereon. It shall also require public notice to be 1851, 256, § 2.
 4 given of the change decreed, and on return of proof thereof may G. S. 110, § 12.
 5 grant a certificate, under the seal of the court, of the name which P. S. 148, § 13.
 6 the person is to bear and which shall thereafter be his legal name.

1 SECTION 14. Each register of probate shall annually, in Decem- Annual return
 2 ber, make a return to the secretary of the commonwealth of all changes of changes.
 3 of names made in the court of which he is register. 1851, 256, § 4.
 G. S. 110, § 14.

P. S. 148, § 14.

1897, 89.

CHAPTER 155.

OF MASTERS, APPRENTICES AND SERVANTS.

1 SECTION 1. A child under the age of fourteen years may be Minors may
 2 bound as an apprentice or servant until that age; and a minor be bound as
 3 above said age may be bound as an apprentice or servant, a female apprentices
 4 to the age of eighteen years or to the time of her marriage within or servants.
 5 that age, and a male to the age of twenty-one years. 1794, 64, § 1.
 R. S. 80, § 1.
 G. S. 111, § 1.
 P. S. 149, § 1.

1 SECTION 2. A child under the age of fourteen years may be — how bound
 2 bound by the father, or, in case of his death or incompetency, by when under
 3 the mother or legal guardian. If illegitimate, he or she may be fourteen years.
 4 bound by the mother during the lifetime of the putative father as 1794, 64, § 1.
 5 well as after his decease. If such children have no parent compe- R. S. 78, §§ 4-6;
 6 tent to act and no guardian, they may, with the approval of the 80, § 2.
 7 selectmen of the town in which they reside, bind themselves. The G. S. 111, § 2.
 8 power of a mother to bind her children shall cease upon her subse- P. S. 149, § 2.
 9 quent marriage, and shall not be exercised by herself or by her
 10 husband during the continuance of such marriage.

1 SECTION 3. A minor above the age of fourteen years may be — how bound
 2 bound in the same manner, but, if bound by his parent or guardian, when above
 3 the indenture shall recite his consent and shall be signed by him. fourteen.
 1794, 64, § 1.
 R. S. 80, § 3.

G. S. 111, § 3.

P. S. 149, § 3.

5 Cush. 417.

1 SECTION 4. A minor child who is, or either of whose parents is, Certain minors
 2 chargeable to a town as having a lawful settlement therein or sup- may be bound
 3 ported there at the expense of the commonwealth may, whether by overseers
 4 under or above the age of fourteen years, be so bound by the over- of the poor.
 5 seers of the poor, a female to the age of eighteen years or to the 1692-3, 28, § 7.
 6 time of her marriage within that age, and a male to the age of 1703-4, 14, § 1.
 7 twenty-one years; and provision shall be made in the contract for 1710-11, 6, § 1.
 8 teaching such minor reading, writing and arithmetic, and for such 1758-9, 17, § 1.
 9 other instruction, benefit and allowance, either within or at the end 1771-2, 5.
 10 of the term, as the overseers may require. 1793, 59, § 4.
 R. S. 80, §§ 6, 7.
 G. S. 111, §§ 4, 5.
 P. S. 149, § 4.
 5 Pick. 250.
 16 Pick. 44.
 7 Gray, 473.
 9 Allen, 207.

1 SECTION 5. A minor shall not be bound as an apprentice or ser- Indenture to be
 2 vant except by an indenture of two parts sealed and delivered by made.
 1794, 64, § 1.

R. S. 80, §§ 4, 8. both parties; and if a minor is bound with the approval of the 3
 G. S. 111, § 6. selectmen, they shall certify such approval in writing upon each 4
 P. S. 149, § 5. part of the indenture. 5
 9 Gray, 377.

One part of indenture to be kept for minor. SECTION 6. One part of the indenture shall be kept for the use 1
 1794, 64, § 1. of the minor by the parent or guardian who executes it, and, if 2
 R. S. 80, §§ 5, 8. made with the approval of the selectmen or by the overseers of the 3
 G. S. 111, § 7. poor, shall be deposited with the town clerk for the use of the 4
 P. S. 149, § 6. minor. 5

Money, etc., paid by master to be for use of apprentice. SECTION 7. All considerations of money or other things paid or 1
 1794, 64, § 1. allowed by the master upon a contract of service or apprenticeship 2
 R. S. 80, § 9. made in pursuance of this chapter shall be paid or secured to the 3
 G. S. 111, § 8. sole use of the minor who is bound thereby. P. S. 149, § 7. 4

Bonds to be given. SECTION 8. No minor shall be bound as an apprentice or ser- 1
 1865, 270, § 1. vant unless his parent or guardian or a responsible person in his 2
 P. S. 149, § 8. behalf gives a bond in the sum of two hundred dollars to the 3
 See c. 106, § 45. master, with condition that the minor shall serve him for the full 4
 term of his apprenticeship or service, and that the master shall be 5
 held harmless from any loss or damage from the breach of such 6
 condition; but if the parents are unable to give such bond a bond 7
 in such sum as may be agreed upon by and between the master and 8
 the parents or guardian of such child may be given. The master 9
 shall also give bond to the minor in a like sum, with condition that 10
 the master shall comply with the conditions of the indenture, shall 11
 not be guilty of any misconduct towards the apprentice or servant 12
 and shall hold the apprentice or servant harmless from any loss or 13
 damage by reason of any failure on his part to comply with the 14
 terms of the indenture. If minors are bound by state, town or 15
 municipal authorities or authorized agents, the bond required to be 16
 given to the master may be waived by the parties. 17

Bond given by master, how kept. SECTION 9. The bond given by the master shall be kept for the 1
 1865, 270, § 2. use of the minor by his parent or guardian; and if there is no 2
 P. S. 149, § 9. parent or guardian, it shall be deposited with the clerk of the town 3
 in which the master resides for the use of the minor. 4

Parents, selectmen, etc., to inquire into treatment of children. SECTION 10. Parents, guardians, selectmen and overseers shall 1
 1703-4, 14, § 1. inquire into the treatment of all children bound by them or with 2
 1710-11, 6, § 1. their approval, or by their predecessors in office or with their 3
 1733, 59, § 5. approval, and shall defend all such children from cruelty, neglect 4
 1733, 59, § 5. or breach of contract on the part of their masters. 5
 1794, 64, § 2.

R. S. 80, § 10.

G. S. 111, § 9.

P. S. 149, § 10.

Complaint for misconduct of master or servant to probate court, etc. SECTION 11. Complaints by parents, guardians, selectmen or 1
 1710-11, 6, § 2. overseers for misconduct or neglect of the master, and by the 2
 1758-9, 17, § 2. master for gross misbehavior of the apprentice or servant or his 3
 1793, 59, § 5. refusal or wilful neglect to do his duty may be filed in the probate 4
 1794, 64, §§ 2, 4. court in the county in which the master resides and shall state 5
 R. S. 80, §§ 11, 12, 22, 23. the facts and circumstances of the case. The court shall order 6

7 notice to the adverse party, and, if the complaint is made by the
 8 master, to all persons who have covenanted in behalf of the appren-
 9 tice or servant and to the selectmen who approved the indenture
 10 or to their successors in office, and it shall have jurisdiction in
 11 equity to hear and determine such complaint. It may enter a
 12 decree that the minor be discharged from his apprenticeship or
 13 service, or that the master be discharged from his contract. A
 14 minor who has been so discharged may be bound out anew.

G. S. 111, §§ 10,
 11.
 P. S. 149, §§ 11,
 12.

1 SECTION 12. Costs may be awarded to the prevailing party,
 2 and execution issued therefor; but no costs shall be awarded
 3 against selectmen or overseers, unless it appears that the complaint
 4 was made without just and reasonable cause. Costs in favor of the
 5 master may be recovered of the parent or guardian who executed
 6 the indenture, or, if there is no parent or guardian liable therefor,
 7 such costs may be recovered in an action against the minor when
 8 he arrives at full age.

Court may
 award costs.
 1793, 59, § 5.
 1794, 64, §§ 2, 4.
 P. S. 80, §§ 13,
 23.
 G. S. 111, § 12.
 P. S. 149, § 13.

1 SECTION 13. All damages recovered from a master in an action
 2 on the indenture for the breach of a covenant on his part shall, after
 3 deducting the necessary charges in prosecuting such action, be the
 4 property of the minor and may be applied and appropriated to
 5 his use by the person who recovers the same, and the residue shall
 6 be paid to the minor, if a male, at the age of twenty-one years, or,
 7 if a female, at the age of eighteen years or at the time of her mar-
 8 riage within that age.

Damages re-
 covered from
 master in
 action on in-
 denture.
 1793, 59, § 5.
 R. S. 80, § 14.
 G. S. 111, § 13.
 P. S. 149, § 14.

1 SECTION 14. Such action may be brought by the parent of the
 2 minor or his executor or administrator, by the guardian of the
 3 minor or his successor or by the overseers of the poor or their suc-
 4 cessors; or it may be brought in the name of the minor by his
 5 guardian or next friend, as the case may require, or by himself
 6 after the expiration of the term of apprenticeship or service.

By whom such
 action may be
 brought.
 1793, 59, § 5.
 R. S. 80, § 15.
 G. S. 111, § 14.
 P. S. 149, § 15.

1 SECTION 15. If the action is brought by the overseers, it shall
 2 not abate by the death of any of them, or by their being succeeded
 3 in office, but shall proceed in the names of the original plaintiffs or
 4 of the survivor of them, or of the executor or administrator of the
 5 survivor; and the money recovered in such action shall be depos-
 6 ited in the city or town treasury, to be applied and disposed of as
 7 provided in section thirteen.

Proceedings,
 if action is
 brought by
 overseers.
 1793, 59, § 5.
 R. S. 80, § 16.
 G. S. 111, § 15.
 P. S. 149, § 16.

1 SECTION 16. No such action shall be maintained, unless com-
 2 menced during the term of apprenticeship or service or within two
 3 years after its expiration. G. S. 111, § 16. P. S. 149, § 17. 140 Mass. 186.

Limitation of
 action by ap-
 prentice.
 1793, 59, § 5.
 R. S. 80, § 17.

1 SECTION 17. If judgment in such action is rendered for the
 2 plaintiff, the court may, upon his motion, discharge the minor from
 3 his apprenticeship or service, if it has not already been done as
 4 before provided, and the minor may be bound out anew.

Discharge of
 apprentice by
 court.
 1793, 59, § 5.
 R. S. 80, § 18.
 G. S. 111, § 17.
 P. S. 149, § 18.

Discharge of
apprentice
by death of
master.
1794, 64, § 5.
R. S. 80, § 24.
G. S. 111, § 21.

SECTION 18. No indenture of apprenticeship or of service made 1
in pursuance of this chapter shall bind the minor after the death 2
of his master, but the apprenticeship or service shall be thereby 3
discharged, and the minor may be bound out anew. 4

P. S. 149, § 19.

Chapter to
apply to mis-
tresses.
R. S. 80, § 25.

SECTION 19. The foregoing provisions of this chapter shall 1
apply as well to mistresses as to masters. 2

G. S. 111, § 22.

P. S. 149, § 20.

Performance,
in cities, of
duties men-
tioned in this
chapter.
R. S. 80, § 27.
G. S. 111, § 24.

SECTION 20. The provisions of this chapter relative to the 1
selectmen or overseers of the poor of a town shall apply to the 2
mayor and aldermen and overseers of the poor of a city or to such 3
other officers as have charge of the poor therein. P. S. 149, § 21. 4

PART III.

OF COURTS AND JUDICIAL OFFICERS AND PROCEEDINGS IN CIVIL CASES.

TITLE I.

OF COURTS AND JUDICIAL OFFICERS.

CHAPTER 156.—Of the Supreme Judicial Court.

CHAPTER 157.—Of the Superior Court.

CHAPTER 158.—Provisions Common to the Supreme Judicial Court and the Superior Court.

CHAPTER 159.—Of the Equity Jurisdiction and Procedure of the Supreme Judicial Court and the Superior Court.

CHAPTER 160.—Of Police, District and Municipal Courts.

CHAPTER 161.—Of Justices of the Peace and Trial Justices.

CHAPTER 162.—Of Probate Courts.

CHAPTER 163.—Of Courts of Insolvency.

CHAPTER 164.—Of Judges and Registers of Probate and Insolvency.

CHAPTER 165.—Of Clerks, Attorneys and other Officers of Judicial Courts.

CHAPTER 166.—Of Provisions relative to Courts and of Naturalization.

CHAPTER 156.

OF THE SUPREME JUDICIAL COURT.

1	SECTION 1.	The supreme judicial court shall consist of one chief	Number of
2	justice and six associate justices.	1639-1700, 3, § 1.	justices.
		1780, 17.	Decl. of Rights,
			art. 29.
	1782, 9, § 1.	1823, 98.	
	1790, 82, § 1.	1840, 87, § 6.	G. S. 112, § 1.
	1804, 105, § 1.	R. S. 81, § 1.	1873, 40.
		1837, 78.	P. S. 150, § 1.
		1848, 9.	
		1852, 127, § 1.	

1	SECTION 2.	The full court shall be the supreme judicial court	Quorum.
2	in banc, and four justices shall constitute a quorum to decide all		1639-1700, 3, § 1.
3	matters which are required to be heard by it.	1852, 127, § 2.	1780, 17.
	1850, 196, § 39.	G. S. 112, § 2.	1782, 9, § 1.
		P. S. 150, § 2.	1800, 71, § 1.
			R. S. 81, § 11.

1	SECTION 3.	The supreme judicial court shall have general super-	Superintend-
2	intendence of all courts of inferior jurisdiction to correct and prevent		ence of inferior
3	errors and abuses therein if no other remedy is expressly provided ;		courts.
			1782, 9, § 2.
			R. S. 81, §§ 4, 5.

1859, 196, § 38.
G. S. 112, § 3.
P. S. 150, § 3.
3 Cush. 212.
8 Cush. 529.
2 Allen, 463.
123 Mass. 420,
471.

and it may issue writs of error, certiorari, mandamus, prohibition, quo warranto and all other writs and processes to such courts and to corporations and individuals which may be necessary to the furtherance of justice and to the regular execution of the laws.

127 Mass. 59, 60, 257.

163 Mass. 446.

167 Mass. 123.

Removal
of certain
officers.
1856, 173, § 7.
G. S. 112, § 4.
1876, 209.
P. S. 150, § 4.
1897, 224.
11 Gray, 206.
1 Allen, 358.

SECTION 4. A majority of the justices may, if in their judgment the public good so requires, remove from office the clerks of the courts or of their own court; and if sufficient cause is shown therefor and it appears that the public good so requires, may, upon a bill, petition or other process, upon a summary hearing or otherwise, remove a clerk of the superior court, or of a police, district or municipal court, a county commissioner, sheriff, register of probate and insolvency or district attorney.

Jurisdiction,
general.
1699-1700, 3, § 1.
1780, 17.
1782, 9, § 2.
R. S. 81, § 2.
1840, 87, § 1.
1859, 196, § 30.
G. S. 112, § 6.
1879, 183.
1880, 28.
P. S. 127, § 34;
150, § 5.
11 Met. 293.
13 Gray, 536.
99 Mass. 468.
127 Mass. 316.
138 Mass. 328.
153 Mass. 197.
163 Mass. 270.
167 Mass. 424.

SECTION 5. The court shall have original and concurrent jurisdiction with the superior court of actions of contract or replevin in which the damages demanded or property claimed, if the actions are brought in the county of Suffolk, exceed in amount or value four thousand dollars or, if brought in any other county, exceed one thousand dollars, if the plaintiff, or a person in his behalf, before service of the writ, makes oath before a justice of the peace that he believes the matter sought to be recovered actually equals in amount or value said amounts, respectively. A certificate of such oath shall be indorsed on or annexed to the writ. The court may also on petition hear and determine all matters and questions arising under wills.

Questions of
law to be heard
by full court.
1804, 105, § 6.
R. S. 81, § 13.
G. S. 112, § 5.
P. S. 150, § 7.
2 Met. 379.

SECTION 6. Questions of law arising upon exceptions or report, upon appeals from the superior court, upon cases stated or upon special verdicts and all issues in law, except as otherwise provided, shall be heard and determined by the full court.

120 Mass. 87.

134 Mass. 338.

137 Mass. 536.

168 Mass. 297.

170 Mass. 152.

Reservation of
questions of
law.
R. S. 81, § 26.
G. S. 112, § 10.
P. S. 150, § 8.
6 Allen, 150.
9 Allen, 166.
128 Mass. 349.
144 Mass. 260.

SECTION 7. Questions of law arising upon a trial or other proceeding or upon a motion for a new trial by reason of an opinion, direction, order or refusal of one justice in matter of law may be reserved for the consideration of the full court, and so much of the case as is necessary for understanding the question shall be reported.

161 Mass. 46.

Law questions,
when argued.
1859, 196, § 45.
G. S. 112, § 34.
1864, 111, § 1.
P. S. 150, § 9.
115 Mass. 335.

SECTION 8. Questions of law which are entered upon the docket of the full court shall, when reached, be argued in their order, if either party is ready, unless the court for good cause shown postpones the argument. But no party shall be compelled to be ready for argument within ten days after the question has been duly reserved of record in the court in which the case is pending.

Separate criminal
docket at
Boston.
1859, 196, § 46.
G. S. 112, §§ 35,
36.
P. S. 150, § 10.

SECTION 9. Questions arising upon appeals and exceptions in the superior court in criminal cases, and all processes and other proceedings in such cases which may lawfully come before the court for the commonwealth at Boston, shall be entered upon the criminal docket, and be in order and have precedence for argument on such

6 day in every month in which the court may be in session as the
 7 court may designate; and the arguments shall be continued until
 8 such cases are disposed of, and shall not be postponed except for
 9 good cause shown.

1 SECTION 10. If, when a question is reached in the order of the
 2 docket, only one party is ready for argument, the court may hear
 3 it, ex parte; or, if, upon exceptions, neither party is ready, the
 4 exceptions may be passed upon by the court without argument, or,
 5 for cause shown, the argument may be postponed; but no case the
 6 argument of which has been postponed shall be again in order for
 7 argument until all the other cases ready for argument have been
 8 argued, postponed or otherwise disposed of.

Hearings ex
 parte and de-
 cisious without
 argument.
 1859, 196, § 47.
 G. S. 112, § 37.
 P. S. 150, § 11.

1 SECTION 11. The full court shall, as soon as may be after the
 2 decision of the questions submitted to it, make and enter a proper
 3 order, direction, judgment or decree for the further disposition
 4 of the case, or cause a rescript, containing a brief statement of the
 5 grounds and reasons of the decision, to be filed therein; or it may
 6 by a writ of certiorari or other proper process remove the record of
 7 the case, or order it to be removed, into the supreme judicial court,
 8 there enter judgment, and remand the record to the court from
 9 which it was removed to carry such judgment into effect, or instead
 10 thereof, the full court may order a new trial or further proceedings
 11 at the bar of the supreme judicial court, or order sentence to be
 12 awarded or execution issued in said court.

Judgment or
 rescript after
 decision.
 1859, 196, § 48.
 G. S. 112, § 11.
 1866, 220.
 P. S. 150, § 12.
 12 Allen, 205.
 100 Mass. 248.
 123 Mass. 418.
 124 Mass. 355.
 130 Mass. 201.
 133 Mass. 536.

1 SECTION 12. The records and rescripts which are made after the
 2 decision of questions of law shall contain a brief statement of the
 3 reasons therefor; and if no further opinion is written within sixty
 4 days, the reporter shall publish the case with the opinion contained
 5 in such record or rescript.

Contents of
 rescripts, etc.
 1859, 196, § 48.
 G. S. 112, § 12.
 P. S. 150, § 13.

1 SECTION 13. If, upon the hearing of an appeal or exceptions in
 2 an action at law, a suit in equity or other proceeding, it appears that
 3 the appeal or exceptions are frivolous, immaterial or intended for
 4 delay, the court may, either upon motion of a party or of its own
 5 motion, award against the appellant or excepting party double costs
 6 from the time when the appeal was taken or the exceptions were
 7 allowed, and also interest from the same time at the rate of twelve
 8 per cent a year on any amount which has been found due for debt
 9 and damages, or which he has been ordered to pay, or for which
 10 judgment has been recovered against him, or may award any part
 11 of such additional costs and interest.

Frivolous ex-
 ceptions.
 1820, 79, § 5.
 R. S. 81, § 31;
 82, § 16.
 G. S. 112, § 13.
 P. S. 150, § 14.
 1883, 223, § 15.
 120 Mass. 218.
 121 Mass. 586.
 126 Mass. 21.
 130 Mass. 265.
 158 Mass. 590.

1 SECTION 14. If, by mistake or accident, an appeal from the
 2 superior court or a bill of exceptions which has been allowed by
 3 the supreme judicial court or the superior court is not duly entered
 4 in the full court, that court, upon petition filed within one year after
 5 the appeal or bill of exceptions should have been entered, and upon
 6 terms, may allow the appellant to enter his appeal or the excepting
 7 party to enter his bill of exceptions. But no security by bond,
 8 attachment or otherwise, which has been discharged by the omission

Late entry of
 appeal.
 1791, 17, § 1.
 R. S. 81, §§ 34-
 37.
 G. S. 112, § 17.
 P. S. 150, § 17.
 4 Met. 371.
 124 Mass. 226.
 161 Mass. 593.

to enter an appeal or bill of exceptions shall be revived or continued 9
in force by the entry thereof. 10

Law sitting for
the common-
wealth.
1859, 196, § 36.
G. S. 112, § 26;
115, § 13.
P. S. 150, § 30;
153, § 16.
103 Mass. 535.

SECTION 15. A law sitting of the court for the commonwealth 1
shall be held annually at Boston on the first Wednesday of January 2
and may be adjourned from time to time to places and times most 3
conducive to the despatch of business and to the interests of the 4
public. At such sitting, questions of law arising in the counties 5
of Barnstable, Middlesex, Norfolk and Suffolk and, by consent of 6
the parties filed in the case, such questions arising in other counties, 7
and such questions for which no other provision is made, shall be 8
entered and determined. 9

Other law
sittings.
1782, 0, § 1.
1793, 82, §§ 2, 3.
1800, 71, § 2.

SECTION 16. For hearing questions of law arising in the follow- 1
ing counties, law sittings shall be held as follows:— 2

1802, 39. 1820, 14, §§ 1, 6. R. S. 81, § 50. G. S. 112, § 27.
1804, 105, §§ 2, 3. 1828, 2. 1859, 196, § 36. P. S. 150, § 31.

Berkshire.
1861, 99, § 1.
1868, 325, § 1.

For the county of Berkshire, at Pittsfield, on the second Tuesday 3
of September. 4

Franklin and
Hampshire.
1861, 99, § 2.

For the counties of Franklin and Hampshire, alternately at Green- 5
field and Northampton, on the first Monday after the second Tues- 6
day of September, the sittings at Northampton being in the even 7
years. 8

Hampden.

For the county of Hampden, at Springfield, on the second Mon- 9
day after the second Tuesday of September. 10

Worcester.
1885, 48.

For the county of Worcester, at Worcester, on the third Monday 11
after the second Tuesday of September. 12

Plymouth.
1862, 215, §§ 1, 2.

For the county of Plymouth, at Plymouth, on the third Tuesday 13
of October. 14

Bristol, Dukes
County and
Nantucket.

For the counties of Bristol, Dukes County and Nantucket, at 15
Taunton, on the fourth Monday of October. 16

1861, 206. 1877, 178, § 3. 1891, 287, § 1.

Essex.
1868, 168.
1870, 351.

For the county of Essex, at Salem, on the first Tuesday of 17
November. 18

Such sittings may be held for the trial of causes and for the 19
despatch of business for which a court may be held by one justice 20
in the county in or for which the court is held; but no jury shall 21
be summoned for such sittings, except in the county of Essex, unless 22
an order therefor is issued by the justices of said court, or one of 23
them, directed to the clerk of the courts of said county. 24

Transfer of
cases by full
court.
1892, 127.
162 Mass. 90.

SECTION 17. The full court sitting in any county, or for the 1
commonwealth, shall have jurisdiction of all questions of law and of 2
all cases and matters at law or in equity, civil or criminal, which 3
arise in any county other than that in or for which it is sitting, 4
and which might properly be heard and determined by it sitting for 5
such county; and, upon the application of a party, the full court 6
may, in its discretion, order any such questions of law, or case or 7
matter, to be entered and determined by the full court sitting in any 8
county, or for the commonwealth. 9

Hearings in
capital cases.
1872, 232, § 2.
P. S. 150, § 20.
1891, 379, § 2.

SECTION 18. Exceptions which are alleged at the trial of a 1
capital case in any county may be entered and determined either at 2
the law sitting of the supreme judicial court held for the county in 3

4 which they arise, or, upon the order of the justices presiding at the
5 trial, at the sitting of the court for the commonwealth.

1894, 204.
162 Mass. 90.

1 SECTION 19. If the justice before whom an action or proceeding
2 is tried in the supreme judicial court or the superior court in
3 counties other than Barnstable, Middlesex, Norfolk or Suffolk con-
4 siderers that a question of law which arises for the determination of
5 the full court is immaterial, frivolous, or intended merely for delay,
6 or that the interests of the parties or of the public require a more
7 speedy determination thereof than can be reached in the sitting
8 established for the county in which the action or proceeding is tried,
9 he shall so certify and order the question of law to be entered
10 and heard at the sitting of the court for the commonwealth; and
11 all the other proceedings shall be the same as if the question had
12 arisen in one of the above-named counties.

Hearings in
Boston of
questions arising in other
counties.
1859, 196, § 36.
G. S. 115, § 13.
P. S. 153, § 16.
162 Mass. 90.

1 SECTION 20. Questions of law arising at the October sitting of
2 the superior court for civil business for the county of Essex may,
3 if so ordered by the presiding justice, unless otherwise agreed by
4 the counsel, be entered and determined at the sitting of the court
5 for the commonwealth.

Law questions
in Essex.
1896, 412, § 1.

1 SECTION 21. Jury sittings of the court shall be held by one
2 justice and he shall there have and exercise all the powers not ex-
3 pressly reserved to the full court.

Jury sittings.
1782, 9, § 1.
1799, 82, §§ 2, 3.
1800, 71, § 2.
1802, 39.
1804, 105, §§ 2, 3.

R. S. 81, § 59. 1859, 196, § 56. G. S. 112, § 28. 1828, 2. P. S. 150, § 32.

4 Such sittings shall be held as follows:—

5 For the county of Barnstable, at Barnstable, on the first Tuesday
6 of May. Barnstable.

7 For the county of Berkshire, at Pittsfield, on the second Tuesday
8 of May. Berkshire.
1868, 325, § 1.

9 For the counties of Bristol, Dukes County and Nantucket, at
10 Taunton, on the third Tuesday of April, and at New Bedford, on the
11 second Tuesday of November. Bristol, Dukes
County and
Nantucket.
1827, 135, § 1.
1860, 210.

12 For the county of Essex, at Salem, on the third Tuesday of April
13 and the first Tuesday of November. Essex.
1860, 210, § 1.
1870, 351.

14 For the county of Franklin, at Greenfield, on the second Tuesday
15 of April. Franklin.
1860, 57, § 1.

16 For the county of Hampden, at Springfield, on the fourth Tues-
17 day of April. Hampden.

18 For the county of Hampshire, at Northampton, on the third
19 Tuesday of April. Hampshire.

20 For the county of Middlesex, at Lowell, on the third Tuesday of
21 April, and at Cambridge, on the third Tuesday of October. Middlesex.
1836, 275, § 1.
1837, 89, § 2.

1860, 57, § 2; 210, § 1.

22 For the county of Norfolk, at Dedham, on the third Tuesday of
23 February. Norfolk.

24 For the county of Plymouth, at Plymouth, on the second Tues-
25 day of May. Plymouth.
1860, 57, § 3.

26 For the county of Suffolk, at Boston, on the first Tuesday of
27 April, and the second Tuesday of September. Suffolk.
1871, 168.

28 For the county of Worcester, at Worcester, on the second Tues-
29 day of April. Worcester.
1859, 274.

Sittings at Fall River.
1878, 107, § 1.
P. S. 150, § 34.

SECTION 22. If the public business so requires, the court may adjourn an established sitting within and for the county of Bristol from either Taunton or New Bedford to Fall River, in the manner and with the effect of an adjournment to another shire town; and such adjournment shall be subject to all the provisions of law relative to adjournments to another shire town.

Dukes County or Nantucket cases to be tried in Bristol.
R. S. 81, § 56.
G. S. 112, § 30.
1877, 178, § 3.
1878, 151, § 1.
P. S. 150, § 35.

SECTION 23. An action, suit or proceeding arising or pending in the county of Dukes County or Nantucket, which is cognizable by the supreme judicial court and which is to be heard before one justice, shall be entered, heard, tried and determined at the court held in the county of Bristol, in all respects as if the same court were held in the county of Dukes County or Nantucket, as the case may be; and all matters cognizable by the full court arising or pending in the county of Dukes County or Nantucket shall be heard and determined as if arising in the county of Bristol.

Powers of justices at jury and law sittings.
R. S. 81, § 38.
1859, 196, § 39.
G. S. 112, § 18.

SECTION 24. Four or more justices present at a jury sitting shall have and exercise the powers of a full court. One justice present at a law sitting shall have and exercise the same authority as at a jury sitting.

P. S. 150, § 36.

Audit of accounts, etc.
G. S. 112, § 39.
P. S. 150, § 38.

SECTION 25. The full court, sitting for the commonwealth, shall examine and audit all accounts for services and expenses incident to said court, and they shall be paid by the commonwealth.

Salaries.
Decl. of Rights,
art. 29.
1780, 9.
1789, 44.
1806, 3.
1809, 13.
R. S. 81, § 61.
1843, 9.
1844, 24.
1856, 10.

SECTION 26. The chief justice of the court shall receive an annual salary of eight thousand five hundred dollars, and each of the associate justices an annual salary of eight thousand dollars, and the chief justice and each of the associate justices shall annually receive five hundred dollars in full compensation for travelling expenses, to be paid by the commonwealth.

1872, 160.

P. S. 150, § 39.

G. S. 112, § 40.

1896, 46, § 1.

1892, 104.

1900, 385, § 1.

Clerical assistance.
1891, 89.

SECTION 27. The justices of the court shall be allowed annually not more than twenty-five hundred dollars for clerical assistance, which shall be paid by the commonwealth upon the certificate of the chief justice.

CHAPTER 157.

OF THE SUPERIOR COURT.

Number of justices.
1799, 81, § 1.

SECTION 1. The superior court shall consist of one chief justice and seventeen associate justices.

1820, 79, § 2.
R. S. 82, § 1;
86, § 1.
1843, 7, § 4.

1845, 155.
1851, 330, § 1.
1855, 449, § 1.
1859, 196, § 7.

G. S. 114, § 1.
1875, 230.
P. S. 152, § 1.
1886, 31.

1888, 58.
1892, 271.
1896, 526.

Court, how held.
1820, 79, § 1.
R. S. 82, § 32.
G. S. 114, § 2.
P. S. 152, § 2.

SECTION 2. The court may be held by one or more of the justices, and when so held shall have and exercise all the power and jurisdiction committed to said court, except as provided in section two of chapter two hundred and one and sections five and eight of this chapter.

1 SECTION 3. The court shall have exclusive original jurisdiction

2 of actions of tort except those of which other courts or trial justices

3 have concurrent original jurisdiction, of libels for divorce or for

4 affirming or annulling marriage, of writs of entry for the foreclosure

5 of mortgages and other real actions, of complaints for flowing lands

6 and of claims against the commonwealth, and original jurisdiction

7 of all civil actions except those of which other courts or trial justices

8 have exclusive original jurisdiction.

Exclusive jurisdiction.
1820, 79, § 1.
R. S. 82, § 2.
1840, 87.
1842, 14, § 1.
1855, 449, § 3.
1859, 196, § 1.
G. S. 114, §§ 3, 4.
1870, 255, § 1.
1880, 28.
P. S. 152, §§ 3, 4.
1887, 332, § 1.

1 SECTION 4. The court shall have original and concurrent juris-

2 diction with the supreme judicial court of actions of contract or

3 replevin in which the amount demanded or property claimed ex-

4 ceeds in amount or value four thousand dollars if brought in the

5 county of Suffolk, and one thousand dollars if brought in any

6 other county; and original and concurrent jurisdiction with police,

7 district and municipal courts and trial justices of personal actions in

8 which the amount demanded or the value of the property claimed

9 exceeds one hundred dollars, except actions of replevin of beasts

10 distrained for the recovery of a penalty or forfeiture, or to obtain

11 satisfaction for damages. No action shall be commenced in the

12 court wherein the debt or damages demanded do not exceed one

13 hundred dollars.

Concurrent jurisdiction.
1820, 79, § 1.
R. S. 82, §§ 2, 4.
1855, 449, § 3.
1859, 308, § 1.
G. S. 114, §§ 4, 9.
P. S. 152, §§ 3, 4.
188 Mass. 328.

1 SECTION 5. Actions in which the amount demanded or property

2 claimed exceeds in amount or value ten thousand dollars if brought

3 in the county of Suffolk, and five thousand dollars if brought in

4 any other county, and in which the plaintiff or a person in his

5 behalf files in the court, with, or subsequent to, the agreement of

6 reference, an affidavit sworn to by him before a justice of the peace

7 that he believes the matter sought to be recovered actually equals

8 in amount or value said amounts, respectively, may, by agreement

9 of the parties, be heard and determined by three justices, sitting

10 without a jury, a majority of whom shall, except as provided in

11 section ninety-six of chapter one hundred and seventy-three, deter-

12 mine all questions of law and fact arising therein.

Trials by three justices.
1891, 227, § 1.

1 SECTION 6. The court shall have jurisdiction of all civil actions

2 and proceedings which are legally brought before it by appeal or

3 removal.

Appellate civil jurisdiction.
1820, 79, § 1.

R. S. 82, § 3.
1859, 196, § 5.

G. S. 114, § 5.
P. S. 152, § 5.

1887, 332, § 3.
1890, 127, § 1.

1898, 562, § 14.
1890, 131, § 2.

1 SECTION 7. The court shall have original jurisdiction of all

2 crimes, and appellate jurisdiction of crimes which are tried and

3 determined before a police, district or municipal court or a trial

4 justice.

Criminal juris-diction.
1793, 81, § 1.
1800, 44, § 3.
1812, 133.
1830, 113, § 1.
1832, 130, § 1.
R. S. 81, § 17; 82, § 25; 86, § 4.
1843, 7, § 1.
1855, 449, § 3.
1859, 196, § 1.
G. S. 112, § 5; 114, § 6.
P. S. 150, § 5; 152, § 6.
1891, 379, § 1.

1 SECTION 8. In capital cases, all proceedings, except the trial

2 of the indictment, may be before one justice. Such trial shall be

3 held before two or more justices, either at a regular or special sit-

4 ting. Upon the death or disability of one of the justices sitting at

5 such trial, any other justice of said court may sit in his place.

Proceedings in capital cases.
1891, 379, § 2.
1894, 204.
162 Mass. 94.

After a decision upon exceptions, judgment may be entered and sentence awarded or a new trial granted by one justice. 6 7

Transmission of indictment.
1869, 433, § 2.
P. S. 150, § 18.
1891, 379, § 3.

SECTION 9. The clerk of the courts for the county in which an indictment for a capital crime has been entered, or, if it has been entered in the county of Suffolk, the clerk of the superior court for criminal business, shall forthwith send notice thereof, with a copy of the indictment, to the chief or first justice of the court and to the attorney general. Any justice of said court may thereupon appoint a time for the arraignment of the prisoner, which shall take place either at a regular sitting or on a day specially assigned therefor. 1 2 3 4 5 6 7 8 9

Arraignment.
1820, 14, § 8.
1832, 130, § 6.
R. S. 81, §§ 15, 16.
G. S. 112, §§ 8, 9, 20.
P. S. 150, § 19.
1891, 379, § 4.
1893, 365.

SECTION 10. If the prisoner pleads guilty, the court shall award sentence against him; if he does not plead guilty, the court may assign him counsel and take all other measures preparatory to a trial, which shall, subject to the provisions of section sixty-one of chapter two hundred and eighteen, be held as soon after the finding of the indictment as the other official duties of the justices will admit and the circumstances of the case require. 1 2 3 4 5 6 7

Indictments in Dukes County and Nantucket.
1832, 130, § 6.
R. S. 81, § 46.
G. S. 112, § 24.
1878, 151.
P. S. 150, § 24.
1891, 379, § 5.

SECTION 11. An indictment for a capital crime found in the county of Dukes County or Nantucket shall be tried in the county of Bristol; and the court for that purpose shall be convened and held, and all proceedings relative thereto conducted, as when held in the county in which an indictment is found. The court may in such case, from time to time while the indictment is pending, make orders relative to the place of confinement of the prisoner, and the expense of his keeping shall in all cases be paid by the county in which the indictment is found. 1 2 3 4 5 6 7 8 9

Change of venue.
1871, 240, § 1.
P. S. 150, § 26.
1891, 379, § 6.

SECTION 12. Upon the petition of a person indicted for a capital crime, the court may, if in its opinion an impartial trial cannot be had in the county in which the case is pending, order a change of venue to any county adjoining the county in which the indictment was found; and on such order, the court shall have jurisdiction in the county to which such change may be made. All other proceedings in such case shall be the same, as nearly as may be, as if the indictment had been originally entered in such adjoining county. 1 2 3 4 5 6 7 8

Transmission of papers.
1871, 240, § 2.
P. S. 150, § 27.
1891, 379, § 7.

SECTION 13. The clerk of the courts in the county in which the indictment is pending, or, if the indictment is pending in the county of Suffolk, the clerk of the superior court for criminal business, shall forthwith, upon the entry of such order upon the docket, transmit the original indictment, with the papers in the case and a duly certified copy of said order, to the clerk of the courts for the county to which the venue has been changed, or, if the last named county is the county of Suffolk, to the clerk of the superior court for criminal business; and the clerk, upon receiving the indictment so transmitted, shall make immediate entry of the case upon the docket of the superior court for such county. 1 2 3 4 5 6 7 8 9 10 11

District attorney to conduct case in new venue.

SECTION 14. After the venue has been changed under the provisions of the two preceding sections, the district attorney for the 1 2

3 county in which the indictment was found shall continue to have
 4 the same authority and duty in the case as if the venue had not
 5 been changed.

1871, 240, § 3.
 P. S. 150, § 28.
 1891, 379, § 8.

1 SECTION 15. If a change of venue is ordered, the sheriff who
 2 has custody of the prisoner shall forthwith deliver him to the sheriff
 3 of the county to which the venue has been changed, who shall
 4 receive and safely keep him as if the indictment had been found
 5 in such county.

Custody of
 prisoner.
 1871, 240, § 4.
 P. S. 150, § 29.
 1891, 379, § 9.

1 SECTION 16. A justice of the court, sitting at the trial or
 2 other proceedings upon an indictment for murder, may allow reason-
 3 able compensation for the services of counsel assigned to defend the
 4 prisoner if he is otherwise unable to procure counsel, and such com-
 5 pensation shall be paid by the county in which the indictment is
 6 found.

Compensation
 of counsel of
 prisoner.
 1893, 394, § 2.

1 SECTION 17. The reasonable expenses incurred and paid by the
 2 counsel assigned by the court for the defence of a person indicted
 3 for murder, who is otherwise unable to procure counsel, shall be paid
 4 by the county in which the indictment is found after approval by a
 5 justice sitting at the trial or other proceedings of the case.

Expenses of
 counsel of
 prisoner.
 1893, 394, § 1.

1 SECTION 18. If an appeal or a bill of exceptions in a case, civil
 2 or criminal, has been duly entered in the supreme judicial court,
 3 any security which has been taken in the case, by bond, attachment
 4 or otherwise, shall stand as if no judgment had been rendered or
 5 exception taken in the superior court, until final judgment shall be
 6 entered, unless, in the case of a bill of exceptions, execution is
 7 awarded because the exceptions are immaterial, frivolous or in-
 8 tended for delay.

Security to
 stand upon ap-
 peal.
 R. S. 82, § 18.
 1859, 196, § 31.
 G. S. 114, § 11.
 P. S. 152, § 12.

1 SECTION 19. Orders or decrees of the supreme judicial court
 2 upon questions which arise in a case pending in the superior court
 3 shall be entered of record in the superior court, and such case shall
 4 be disposed of as law and justice require, conformably to the re-
 5 script or order of the supreme judicial court.

Decrees of
 supreme judi-
 cial court to be
 recorded.
 G. S. 114, § 12.
 P. S. 152, § 13.
 103 Mass. 476.
 124 Mass. 353.

1 SECTION 20. Parties to an action which is submitted to the de-
 2 termination of the court may agree that the judgment therein shall
 3 be final.

Judgment final
 by agreement.
 R. S. 82, § 11.

G. S. 114, § 13.

P. S. 152, § 14.

1 SECTION 21. The clerk shall, at the expense of the appellant or
 2 excepting party, or of the plaintiff upon a case reserved or reported,
 3 or of the commonwealth in criminal cases, prepare and transmit to
 4 the supreme judicial court for the proper county one copy of every
 5 paper on file in the case, except papers used in evidence only, and
 6 of all papers made part of the case or referred to in the bill of ex-
 7 ceptions or report, or so much thereof as is necessary fully to pre-
 8 sent the question of law, for the use of the chief justice, and a like
 9 copy for the clerk of the supreme judicial court, which shall be kept
 10 on file in said court: and one copy of the bill of exceptions, report
 11 or papers upon which the question of law arises on appeal for each

Transmission
 of papers.
 1859, 196, §§ 33,
 34.
 G. S. 114, § 14.
 P. S. 152, § 15.
 98 Mass. 142.

associate justice, for each party and for the reporter of decisions. 12
 Original papers used in the trial, which are needed in the supreme 13
 judicial court, shall be transmitted to its clerk to be by him kept on 14
 file until the rescript in such action is sent. The expense of such 15
 copies and transmission shall be taxed in the bill of costs of the 16
 prevailing party, if he has paid it. 17

Affirmation of
 judgment of
 district, etc.,
 court upon
 non-entry of
 appeal.

1783, 42, § 6.
 R. S. 85, § 15.
 G. S. 120, § 27.
 P. S. 155, § 34.
 1893, 306, § 30.
 117 Mass. 279.
 118 Mass. 418.
 171 Mass. 444.

SECTION 22. If, upon an appeal in a civil action or proceeding 1
 from a judgment of a police, district or municipal court or trial 2
 justice, the appellant fails to enter and prosecute his appeal, or if, 3
 upon such appeal from a trial justice, the appellant fails to produce 4
 the copies or papers mentioned in section one hundred and three 5
 of chapter one hundred and seventy-three, the court may, upon 6
 complaint of the appellee, affirm the former judgment or render 7
 such other judgment as law and justice require. 8

Late entry of
 appeal.

1791, 17.
 R. S. 82, §§ 21-
 24.
 G. S. 114, § 15.
 P. S. 152, § 16.
 117 Mass. 280.

SECTION 23. If, by mistake or accident, an appeal to the supe- 1
 rior court is not duly entered therein, or if, for a like reason, a 2
 complaint founded on an omission to enter an appeal has not been 3
 entered by the appellee, the court, upon petition filed within one 4
 year after the appeal or complaint should have been entered, and 5
 upon terms, may allow the appellant to enter his appeal or the 6
 appellee to enter his complaint. Attachments made and security 7
 given in the original action shall not be revived or continued in 8
 force by the entry of such appeal or complaint. 9

Sittings of
 court.

Barnstable.
 1833, 51.
 1869, 354.

Berkshire.
 1850, 258.
 1868, 325, § 1.
 1871, 84.

Bristol.
 1827, 135, § 2.
 1878, 95.
 1888, 314, §§ 1, 3.
 1891, 287, § 2.
 1899, 140.

Dukes County.
 1825, 107, § 2.
 1827, 18.

Essex.
 1833, 150.
 1849, 39.
 1852, 288.
 1860, 62.
 1870, 315.
 1885, 191, § 1.
 1889, 461.
 1896, 412.

Franklin.
 1831, 44.
 1883, 327.

Hampden.
 1830, 40.
 1844, 171.
 1845, 253.
 1849, 53.
 1868, 250.
 1885, 27.

SECTION 24. Sittings of the court shall be held as follows:— 1

1799, 81, § 1.
 R. S. 82, §§ 40, 41; 86, § 1.

1855, 449, § 7.
 1859, 196, § 10.

G. S. 114, § 16.
 P. S. 152, § 17.

For the county of Barnstable, at Barnstable, on the first Tuesday 2
 of April and on the second Tuesday of October. 1891, 175. 1899, 271. 3

For the county of Berkshire, at Pittsfield, for civil business, on 4
 the fourth Mondays of February, June and October; for criminal 5
 business, on the second Mondays of January and July. 6

For the county of Bristol, for civil business, at Taunton, on the 7
 first Monday of March and the second Monday of September, and 8
 at New Bedford, on the first Mondays of May and December; for 9
 criminal business, at Taunton, on the first Monday of February, at 10
 New Bedford, on the first Monday of June, and at Fall River, on 11
 the first Monday of November. 12

For the county of Dukes County, at Edgartown, on the last Tues- 13
 days of April and September. 1833, 51. 1874, 34. 1889, 308. 14

For the county of Essex, for civil business, at Salem, on the first 15
 Mondays of June and December; at Lawrence, on the first Monday 16
 of March; and at Newburyport, on the first Monday of October; for 17
 criminal business, at Salem, on the second Monday of January; at 18
 Newburyport, on the second Monday of May; and at Lawrence, on 19
 the second Monday of September. 20

For the county of Franklin, at Greenfield, on the second Mondays 21
 of March, July and November. 1898, 355. 22

For the county of Hampden, at Springfield, for civil business, on 23
 the second Mondays of March and June and the fourth Monday of 24
 October; for criminal business, on the first Monday of May, the 25
 fourth Monday of September and the third Monday of December. 26

27 For the county of Hampshire, at Northampton, for civil business, Hampshire.
 28 on the third Monday of February, the first Monday of June and the 1846, 193.
 29 third Monday of October: for criminal business, on the second Mon- 1852, 114.
 30 day of June and the third Monday of December.

31 For the county of Middlesex, for civil business, at Lowell, on the Middlesex.
 32 first Mondays of April and October, and at Cambridge, on the first 1836, 275.
 33 Monday of January; for criminal business, at Cambridge, on the 1837, 89, § 2.
 34 second Monday of February and the first Monday of June, and at 1839, 117.
 35 Lowell, on the third Monday of October. 1841, 111.
 1843, 41.
 1867, 220, § 2.
 1878, 9.

36 For the county of Nantucket, at Nantucket, on the first Tuesdays Nantucket.
 37 of July and October. 1823, 107, § 1.
 1833, 51. 1878, 100.

38 For the county of Norfolk, at Dedham, for civil business, on the Norfolk.
 39 first Mondays of January, May and October; for criminal business, 1867, 105.
 40 on the first Mondays of April, September and December. 1889, 287.

41 For the county of Plymouth, at Plymouth, on the second Mondays Plymouth.
 42 of February and June and the fourth Monday of October. 1830, 22.
 1862, 215, § 3.

43 For the county of Suffolk, at Boston, for civil business, on the Suffolk.
 44 first Tuesdays of January, April, July and October; for criminal 107 Mass. 209.
 45 business, on the first Monday of every month.

46 For the county of Worcester, for civil business, at Worcester, on Worcester.
 47 the first Monday of March and the second Monday of December, and 1835, 116.
 48 at Fitchburg, on the first Mondays of June and November; for 1894, 169.
 49 criminal business, at Worcester, on the third Monday of January, 1901, 70.
 50 the second Monday of May and the third Monday of October, and
 51 at Fitchburg, on the third Monday of August.

1 SECTION 25. The court shall, except in July, August and Sep- Speedy trials
 2 tember, hold a separate and continuous session, so far as is practicable, in Suffolk.
 3 in the county of Suffolk for the speedy trial of causes which have 1897, 381.
 4 been advanced for speedy trial according to law, of causes which
 5 have been entered in said court on appeal, of actions of contract orig-
 6 inally commenced in the superior court in which the amount de-
 7 manded or property claimed does not exceed in amount or value two
 8 thousand dollars, of petitions to enforce liens under the provisions
 9 of chapter one hundred and ninety-seven, and, upon the application
 10 of either party, of actions in which a new trial by jury has been
 11 granted or an auditor's report has been filed, and of all other cases
 12 in which, in the opinion of a justice of said court, substantial jus-
 13 tice and relief require a speedy trial. A trial list of such cases shall
 14 be made every month.

1 SECTION 26. The court shall not be required to sit for the trial Sitings of
 2 of actions described in section five, except in Boston, Worcester three justices.
 3 and Springfield, and the justices shall, from time to time, make pro- 1891, 227, §§ 3, 4.
 4 vision for such sittings in said cities, and may make provision for such
 5 sittings in any county, at times which are most convenient. Such
 6 actions shall be tried in such one of said cities as the parties may
 7 agree upon or as the court orders.

1 SECTION 27. The court may adjourn any established sitting in Adjournment
 2 and for the county of Bristol from Taunton or New Bedford to Fall to Brockton or
 3 River, or in and for the county of Plymouth from Plymouth to Fall River.
 4 Brockton, in the manner and with the effect of an adjournment 1877, 68.
 1880, 48.
 P. S. 152, § 18.
 1885, 134.
 1888, 314, § 4.

to another shire town; and such adjournment shall be subject to all the provisions of law relative to adjournments to another shire town.

Return day in criminal cases. 1841, 111, § 3. 1859, 196, § 12. G. S. 114, § 18. P. S. 152, § 23. 1897, 490, § 3. 11 Gray, 205.

SECTION 28. The first Monday of every month shall be a return day for the entry of appeals from police, district and municipal courts and trial justices and of suits upon recognizances and bonds in criminal cases. Such appeals shall be entered on the return day next after the appeal is taken. Such suits may be made returnable at the election of the district attorney at any such return day within three months after the date of the writ. Trials by jury of such suits shall take place at criminal sittings; and such suits shall be filed, docketed and recorded as criminal cases.

Criminal business, only at sittings for criminal business. 1835, 116, § 3. R. S. 82, § 42.

SECTION 29. In the counties in which separate sittings of the superior court are established for civil and criminal business, criminal cases only shall be tried by jury at the criminal sittings, and civil cases only at the civil sittings.

1859, 196, § 11.

G. S. 114, § 17.

P. S. 152, § 22.

1897, 490, § 4.

— special sittings for. 1874, 200. P. S. 152, § 19. 1897, 490, § 5.

SECTION 30. The chief justice of the court may, by an order in writing directed to the sheriff, order a special jury for a sitting for criminal business to be held in any county at such time and place as may be appointed in such order. The sheriff shall give notice thereof as directed in the order therefor; but no person under recognizance to answer to an indictment or to a criminal complaint shall be held to appear at such special sitting or at any time and place other than the regular sittings of the court, unless duly notified by written summons from the clerk.

Assembling of grand jury. 1897, 490, § 6.

SECTION 31. The chief justice of the court may, by an order in writing, directed to the sheriff, cause the grand jury in any county to be assembled at such time and place as may be appointed in such order.

Precedence of certain prosecutions. 1855, 215, § 35. 1859, 196, § 54. G. S. 86, § 58; 114, § 20. P. S. 152, § 25.

SECTION 32. At a sitting of the court at which criminal business may be transacted, cases arising under the provisions of chapters one hundred and ninety-one, one hundred and one hundred and one shall have precedence in the order in which said chapters are herein named, next after the cases of persons who are actually confined in prison and awaiting trial.

Extension of sitting. 1863, 33. P. S. 152, § 26. 121 Mass. 31.

SECTION 33. If a criminal case is on trial at the end of a sitting, such sitting may be continued, and the jurors serving in such case may be required to serve until the case is finished.

Custody of records. 1859, 196, § 4. G. S. 114, § 21. P. S. 152, § 27.

SECTION 34. The records of courts which are transferred to the superior court shall remain in custody of its clerks. In the county of Suffolk, the clerk of said court for civil business shall have the custody of said records in civil cases, and the clerk for criminal business shall have the custody of said records in criminal cases. Copies of said records may be certified by said clerks respectively. Judicial writs and processes which are founded upon such records

8 shall issue under the seal of the superior court, in like manner and
 9 with the same effect as similar writs and processes which are
 10 founded upon its own records.

1 SECTION 35. The chief justice of the court shall receive an
 2 annual salary of seven thousand dollars, and each associate justice
 3 an annual salary of six thousand five hundred dollars, and the chief
 4 justice and each associate justice shall annually receive five hundred
 5 dollars in full compensation for travelling expenses, to be paid by
 6 the commonwealth.

Salaries.
 1859, 196, § 17.
 G. S. 114, § 22.
 1867, 165.
 1872, 279.
 1879, 279.
 P. S. 152, § 28.
 1882, 205.
 1888, 274.
 1892, 328.
 1900, 385, § 2.

CHAPTER 158.

PROVISIONS COMMON TO THE SUPREME JUDICIAL COURT AND THE SUPERIOR COURT.

1 SECTION 1. In case of a vacancy in the office of chief justice
 2 of the supreme judicial court or the superior court, or of the illness
 3 or absence of the chief justice, his duties shall be performed by
 4 the senior justice of such court who is present and qualified to act.

Vacancies, etc.
 R. S. 81, § 49.
 G. S. 115, § 1.
 P. S. 153, § 1.

1 SECTION 2. If, in the opinion of a justice of either court, it is
 2 important that a writ or other process should be speedily issued in
 3 a cause pending in the court of which he is a justice, he may order
 4 it to be issued by the clerk of the courts in the county in which he
 5 is sitting; and such clerk shall transmit the order to the clerk of the
 6 courts of the county in which the cause is pending, to be filed and
 7 recorded with the other papers in the case.

Issue of proc-
 ess in any
 county.
 1886, 223.

1 SECTION 3. The courts shall, respectively, from time to time
 2 make and promulgate uniform codes of rules, not inconsistent with
 3 law, for regulating the practice and conducting the business of such
 4 courts in cases not expressly provided for by law; for the purpose of,
 5 First, Simplifying and shortening pleadings and procedure.
 6 Second, Prescribing the terms upon which amendments will be
 7 allowed or unnecessary counts and statements stricken from the
 8 record; discouraging negligence and deceit; preventing delay; se-
 9 curing parties from being misled; placing the party not in fault as
 10 nearly as possible in the condition in which he would have been if
 11 no mistake had been made; distinguishing between form and sub-
 12 stance; and substituting fixed and certain requirements for the dis-
 13 cretion of the court.

Rules.
 1782, 9, § 4.
 1820, 73, § 7.
 R. S. 81, § 10;
 82, § 37.
 1836, 273, § 2.
 1851, 233, §§ 44,
 113.
 1852, 312, §§ 34,
 76.
 1853, 371, § 4.
 1857, 267, § 3.
 1859, 196, §§ 35,
 49.
 G. S. 113, § 26;
 115, § 4.
 1874, 339, § 4.
 P. S. 151, § 33;
 153, § 4.
 127 Mass. 518.

14 Third, Conducting trials.

15 Fourth, Presenting distinctly the questions to be tried by the
 16 jury.

17 Fifth, Giving a party such notice of the evidence which is in-
 18 tended to be offered by the adverse party as will prevent surprise
 19 and enable him to prepare for trial.

20 Sixth, Prescribing such forms of verdicts as will place upon
 21 record the finding of the jury.

22 Seventh, The entry of judgment by the clerk under a general
 23 order in all cases ripe for judgment.

1885, 384, § 12.

1894, 283, § 2.	Eighth, Expediting the decision of causes and securing the speedy trial thereof.	24 25
	Ninth, Remedying abuses and imperfections in practice and diminishing costs.	26 27
1897, 472.	Tenth, Filing and hearing motions to set aside verdicts and notifying adverse parties thereof.	28 29
1896, 401.	Eleventh, The superior court may also from time to time make and promulgate such rules for the regulation of the printing, publication and distribution of trial lists and for notifying attorneys of trials in civil causes as the public convenience in the several counties requires.	30 31 32 33 34
	The rules of the superior court shall not conflict with those of the supreme judicial court.	35 36
Courts always open. 1885, 384, § 2. 1897, 490, § 1. 153 Mass. 361. 175 Mass. 37.	SECTION 4. The courts shall be always open in every county and the business thereof, or of the justices thereof, may be transacted at any time; but such business shall not, except as provided in section five of chapter one hundred and sixty-six, be transacted on the Lord's day or on a legal holiday unless it relates to an application which, in the opinion of the justice to whom it is made, is of pressing necessity.	1 2 3 4 5 6 7
Transaction of business in any county. 1885, 384, § 3.	SECTION 5. The courts and the justices thereof, respectively, may in any county transact any business of such courts and direct the entry of any order, judgment or decree in an action, suit or proceeding pending in the same court in another county.	1 2 3 4
Duration of sittings. 1885, 384, § 4. 1897, 490.	SECTION 6. Regular sittings of the courts for the transaction of civil or criminal business shall commence on the day appointed by law therefor, and shall end on the day preceding the day next appointed by law for a sitting in such county for the transaction of the same kind of business. Such regular sittings may at any time be adjourned from time to time or without day, and such adjournment shall excuse the attendance during the adjournment of all persons who are required to attend at the sitting, unless expressly notified to attend, but shall not otherwise terminate the sitting.	1 2 3 4 5 6 7 8 9
Simultaneous sessions. 1851, 330, § 2. 1859, 196, § 13. G. S. 115, § 16. P. S. 153, § 22.	SECTION 7. Two or more simultaneous sessions of the court may be held in the same county, if the public convenience so requires; and the business may be so divided as to secure its speedy and convenient disposal.	1 2 3 4
Allowance of accounts. 1898, 53. R. S. 82, § 46. 1859, 196, § 20. G. S. 115, § 17. P. S. 153, § 23.	SECTION 8. The courts shall, respectively, receive, examine and allow accounts for services and expenses incident to their sittings in the several counties and order payment thereof out of the respective county treasuries.	1 2 3 4
Attendance of justices. 1821, 23, § 1. R. S. 82, § 38. G. S. 115, § 18. P. S. 153, § 24.	SECTION 9. The justices of said courts, respectively, or a majority of them, shall from time to time make such arrangements for the attendance of a justice at the several times and places appointed for holding the courts as will be most convenient and as will insure the prompt performance of their duties.	1 2 3 4 5

1 SECTION 10. A justice of either court who, having attained the
2 age of seventy years and having served in either or both of said
3 courts for at least ten consecutive years, resigns his office shall,
4 during the remainder of his life, receive an amount equal to three-
5 fourths of the salary which is by law payable to him at the time of
6 his resignation, to be paid by the commonwealth in the same manner
7 as the salaries of justices of said courts are paid.

Retirement of
justices, for
age,
1885, 162.
1887, 420.
1899, 310, § 1.

1 SECTION 11. A justice of either court who, having attained the
2 age of sixty years and having served in either or both of said courts
3 for at least fifteen consecutive years, shall have become disabled for
4 the full performance of his duties as such justice by reason of ill-
5 ness or otherwise may, with the approval of the governor and
6 council, resign his office under the provisions of this section, and
7 shall thereafter, during the remainder of his life, receive the same
8 amount, and in the manner provided, in the preceding section.

— for
disability.
1899, 310, § 2.

1 SECTION 12. If the public business so requires, either court may
2 adjourn an established sitting in one shire town to another in the
3 same county. Persons, recognizances and processes required to
4 appear at or to be returned to the established sitting shall appear at,
5 be returnable to and have day in, the adjourned sitting.

Adjournment
to another
shire town.
1848, 236.
1859, 275.
G. S. 115, § 19.
P. S. 153, § 25.

1 SECTION 13. If no justice is present at the time and place ap-
2 pointed for holding a court at the beginning of a sitting or at an
3 adjournment thereof, the sheriff of the county or any of his deputies
4 may adjourn the court from day to day or from time to time, as
5 circumstances require, or as ordered by any of the justices, and shall
6 give notice of such adjournment by making public proclamation in
7 the court house, and by a notice posted on the door of the court
8 house or published in a newspaper.

— in absence
of justice,
1782, 9, § 5.
1804, 105, § 8.
1820, 14, § 5; 79,
§ 2.
1830, 113, § 9.
R. S. 81, § 39;
82, § 39.
1859, 196, § 19.
G. S. 115, § 20.
P. S. 153, § 26.
97 Mass. 214.

1 SECTION 14. In such case, any justice may by a written order
2 require the sheriff or his deputy to adjourn the court without day
3 or to the time expressed in the order; and the officer shall adjourn
4 the court accordingly by public proclamation in the court house.

Same subject.
1782, 9, § 5.
R. S. 81, § 40.
G. S. 115, § 21.
P. S. 153, § 27.

1 SECTION 15. Each court may establish a seal and appoint all
2 officers necessary for the transaction of its business.

Seal, and offi-
cers of court.
1859, 196, § 16.

G. S. 115, § 22.

P. S. 153, § 28.

CHAPTER 159.

OF THE EQUITY JURISDICTION AND PROCEDURE OF THE SUPREME JUDICIAL COURT AND THE SUPERIOR COURT.

1 SECTION 1. The supreme judicial court and the superior court
2 shall have original and concurrent jurisdiction in equity of all cases
3 and matters of equity which are cognizable under the general prin-
4 ciples of equity jurisprudence and, with reference thereto, shall be
5 courts of general equity jurisdiction.

General equity
jurisdiction,
concurrent.
1857, 214.
G. S. 113, § 2.
1877, 178, § 1.
P. S. 151, § 4.
1883, 223, §§ 1, 2.
100 Mass. 365.
135 Mass. 140.

140 Mass. 459.
141 Mass. 545.

159 Mass. 356.
165 Mass. 123.

166 Mass. 294.
168 Mass. 76.

172 Mass. 53.
177 Mass. 230.

Statutory
equity juris-
diction.
G. S. 113, § 1.
P. S. 151, § 1.
1883, 223, § 1.
150 Mass. 73.
155 Mass. 417.

SECTION 2. The supreme judicial court shall have original and exclusive jurisdiction in equity of all cases and matters of equity which are cognizable under the provisions of any statute and are not within the jurisdiction conferred by the provisions of the preceding section, unless a different provision is made; and the superior court shall have like original and exclusive, or like original and concurrent, jurisdiction only if the statute so provides.

Special juris-
diction.
R. S. 81, § 8.
G. S. 113, § 2.

SECTION 3. The supreme judicial court and the superior court shall have original and concurrent jurisdiction in equity of the following cases: —

Re-delivery,
etc.
1823, 140, § 1.
1853, 371, § 4.
20 Pick. 28.

Clause 1. Suits to compel the re-delivery of goods or chattels which have been taken or detained from the owner, and are so secreted or withheld that they cannot be replevied.

23 Pick. 228.
7 Cush. 530.

16 Gray, 219.
131 Mass. 319.

134 Mass. 181.

Contribution.
1839, 96, § 2.
1853, 371, § 4.

Clause 2. Suits for contribution by or between devisees, legatees or heirs liable for the debts of a deceased testator or intestate, and by or between other persons respectively liable for the same debt or demand, if there are two or more such persons liable at the same time to make such contribution.

Multiplicity of
interests.
13 Gray, 5.
5 Allen, 380.
100 Mass. 357.

Clause 3. Other cases in which three or more parties have distinct rights or interests which cannot be justly and definitely decided and adjusted in one action at law.

105 Mass. 543.

110 Mass. 54.

113 Mass. 502.

120 Mass. 481.

Joint owners,
etc.
1891, 383.

Clause 4. Suits between joint owners of personal property, and their legal representatives, relative to such property, with authority to determine their respective rights and interests therein, to order a division or sale thereof and make and order a proper distribution of the proceeds of a sale, and to do all other things relative to a determination of the ownership, division and distribution of such property or the proceeds thereof.

Joint trustees,
etc.
1832, 162.

Clause 5. Suits between joint trustees, co-executors and co-administrators, and their legal representatives.

Accounts.
R. S. 118, § 43.
106 Mass. 50.
110 Mass. 32.
114 Mass. 122.

Clause 6. Suits upon accounts, the nature of which is such that they cannot be conveniently and properly adjusted and settled in an action at law.

123 Mass. 117.

145 Mass. 50.

Creditors' bills.

1851, 206.
1858, 34.
1884, 285.
1 Allen, 566.
105 Mass. 423.
118 Mass. 273.
127 Mass. 206.
128 Mass. 478.
132 Mass. 164.
408.
136 Mass. 73.
137 Mass. 523.
140 Mass. 271.
434.
147 Mass. 81.
148 Mass. 76.
411.
149 Mass. 24.
487.
150 Mass. 211.
289.
151 Mass. 206.
481, 515.
152 Mass. 64.
154 Mass. 302.
159 Mass. 259.
434.
161 Mass. 58.
163 Mass. 127.
164 Mass. 85.
271.

Clause 7. Suits by creditors to reach and apply, in payment of a debt, any property, right, title or interest, legal or equitable, of a debtor, within or without this commonwealth, which cannot be reached to be attached or taken on execution in an action at law, although the amount of the debt is less than one hundred dollars or the property sought to be reached and applied is in the hands, possession or control of the debtor independently of any other person or cannot be reached and applied until a future time or is of uncertain value, if the value can be ascertained by sale, appraisal or by any means within the ordinary procedure of the court. In such suit, the interest of a partner of the defendant in the partnership property may be reached and applied in payment of the plaintiff's debt; but unless it is a judgment debt, the business of the partnership shall not be enjoined or otherwise interrupted further than to restrain the withdrawal of any portion of the debtor's share or interest therein until the plaintiff's debt is established; and if either partner gives to the plaintiff a sufficient bond with sureties approved by the clerk, conditioned to

44 pay to the plaintiff the amount of his debt and costs within thirty
45 days after it is established, the court shall proceed no further therein
46 than to establish the debt; and upon the filing of such bond, any in-
47 junction previously issued in such suit shall be dissolved.

165 Mass. 389.
171 Mass. 309,
600.

48 *Clause 8.* Suits to reach and apply in payment of a debt any
49 property, right, title or interest, real or personal, of a debtor, liable
50 to be attached or taken on execution in an action at law against him
51 and fraudulently conveyed by him with intent to defeat, delay or
52 defraud his creditors, or purchased, or directly or indirectly paid for,
53 by him, the record or other title to which is retained in the vendor
54 or is conveyed to a third person with intent to defeat, delay or de-
55 fraud the creditors of the debtor.

Fraudulent
conveyances.
1875, 235.
P. S. 151, § 3.
1883, 223, § 2.
122 Mass. 571.
141 Mass. 601.
148 Mass. 247.
154 Mass. 310.

1 SECTION 4. Each court may, if it is necessary to secure justice
2 and equity, issue to courts of inferior jurisdiction, corporations and
3 persons all general and special writs and processes required in pro-
4 ceedings in equity.

P. S. 151, § 1.

1883, 223, § 1.

Issue of proc-
ess.
1782, 9, § 2.
1817, 87, § 2.
R. S. 81, § 9.
G. S. 113, § 1.

1 SECTION 5. Suits in equity in said courts may be brought in
2 any county in which a transitory action between the same parties
3 might be brought, as well as in counties in which it is elsewhere
4 provided that such suits may be brought.

Venue.
1883, 223, § 13.
158 Mass. 376.

1 SECTION 6. No suit in equity in said courts shall be defeated on
2 the ground that there is an adequate remedy at law, nor shall any
3 action at law be defeated on the ground that the relief sought can
4 be obtained only by a suit in equity, but such proceedings shall, at
5 any time before a final judgment or decree, be amendable at the dis-
6 cretion of the court upon terms.

Amendments.
1883, 223, § 17.
168 Mass. 74.

1 SECTION 7. Procedure, process and practice in equity causes in
2 the superior court shall, as nearly as may be, conform to that of the
3 supreme judicial court, the general rules of which for the regulation
4 of practice in equity shall, so far as applicable and except as herein-
5 after provided, be the rules of the superior court for the regulation
6 of practice in equity.

Procedure in
superior court.
1883, 223, § 3.

1 SECTION 8. Suits in equity may be commenced by bill or peti-
2 tion, with a writ of subpœna according to the usual course of proceed-
3 ings in equity, or by an original writ of summons or of summons
4 and attachment or by the trustee process, or may be commenced
5 by a declaration in an action of contract or tort, as the case may be,
6 with or without an order for the attachment of the property or
7 arrest of the defendant, and shall be returnable on the return days
8 prescribed by section twenty-four of chapter one hundred and
9 sixty-seven or on the rule days established by the court.

Commence-
ment of suits
in equity.
1798, 77, § 1.
R. S. 90, § 117;
107, § 22.
1853, 371, §§ 1, 2.
1856, 38, § 2.
G. S. 113, § 3.
P. S. 151, § 5.
1883, 223, §§ 2,
11.
1 Allen, 572.
137 Mass. 403.

1 SECTION 9. If a suit in equity is commenced by bill or petition
2 inserted in an original writ of summons or of summons and attach-
3 ment, or in a writ of trustee process, or by a declaration in an action
4 of contract or tort, the bill, petition or declaration need not be in-
5 serted in the separate summons, in the copy of the original writ to
6 be served on the defendant nor in the copy of the writ to be deposited

Bill not re-
quired in sum-
mons.
1880, 37.
P. S. 151, § 6.
1883, 223, § 2.

or left with or in the office of a register of deeds or officer of a corporation or other person, for the purpose of making an attachment. 7 8

Notice in ques-
tions under
wills.
1899, 373.

SECTION 10. Upon petitions for the construction of wills, or for instruction relative to wills, the court, instead of the notice now required by law, may order notice of the petition and of the time and place for hearing to be served on such number of the parties in interest representing all possible interests as the court shall direct, and to be published for three weeks successively in such newspaper as it directs. If it appears that any possible interest is not represented, further service may be ordered until all possible interests are represented before the court or until a guardian ad litem has been appointed. If all possible interests are represented by persons before the court, it shall not be necessary to make other persons having similar interests parties defendant. 1 2 3 4 5 6 7 8 9 10 11 12

Docket entry
of equity suits.
1883, 223, § 5.
1884, 316.
1892, 440.

SECTION 11. Suits in equity in the superior court shall be entered on the same docket as other cases, except in the counties of Suffolk and Middlesex, where they shall be entered upon a separate equity docket. All processes shall be returnable at the return day occurring next after fourteen days from the date of the process, if required to be served fourteen days before the return day, or at the return day occurring next after thirty days from such date if required to be served thirty days before the return day, or at any rule day within three months after the date of the process. 1 2 3 4 5 6 7 8 9

Form of bill.
1855, 194, §§ 2, 3.
G. S. 113, §§ 3, 4.
P. S. 151, § 7.
1883, 223, §§ 2,
10.

SECTION 12. The material facts and circumstances which are relied on by the plaintiff shall be stated with brevity, and immaterial and irrelevant matters shall be omitted. The bill, unless actually inserted in a writ, shall be entitled in the proper court, with the full title of the cause containing the names and descriptions of all the parties. It shall not be required to contain any address to the court, or the usual commencement, or any prayer for an answer, for general relief or for process. Discovery may be sought by inserting a prayer therefor in the bill, petition or declaration, or by interrogatories. 1 2 3 4 5 6 7 8 9

Demurrer,
answer and
plea.
1855, 194, §§ 3, 4.
G. S. 113, §§ 3, 4.
P. S. 151, §§ 7,
10.
1883, 223, §§ 2,
10.
9 Allen, 101.
111 Mass. 300.

SECTION 13. A defence to a suit in equity shall be made by demurrer, plea or answer. A demurrer or plea need not contain a protestation or concluding prayer; but a demurrer shall be accompanied by a certificate that it is not intended for delay. An answer, except to a bill for discovery only, shall not be made under oath or under seal, and it need not contain any saving of exceptions to the bill, or a prayer to be dismissed or for costs. Answers to interrogatories in a bill for discovery shall be made within such time as the court orders, and questions arising thereon shall be determined by the rules applicable to bills for discovery. 1 2 3 4 5 6 7 8 9 10

Signature to
pleadings.
1883, 223, § 10.

SECTION 14. Bills, answers, petitions and other pleadings may be signed by the party or his attorney, and shall not require any other signature. 1 2 3

Interroga-
tories.
1862, 40, § 1.
P. S. 151, § 8.
1883, 223, § 2.

SECTION 15. Either party may, at any time after the filing of the answer in a suit in equity, file interrogatories in the clerk's office for the discovery of facts and documents which are material to the 1 2 3

4 support or defence of the suit, to be answered upon oath by the
5 adverse party in the manner and subject to the provisions of chapter
6 one hundred and seventy-three relative to interrogatories in actions
7 at law.

1 SECTION 16. If a party neglects or refuses to expunge, amend
2 or answer according to the requirements of chapter one hundred and
3 seventy-three, the bill shall be dismissed or taken as confessed, or
4 such other order or decree may be entered as the case may require.

Refusal to
answer, etc.
1862, 40, § 2.
P. S. 151, § 9.
1883, 223, § 2.

1 SECTION 17. Suits in equity, and motions and other applications
2 therein, whether interlocutory or final, shall in the first instance be
3 heard and determined by one justice of the court.

1883, 223, § 2.

120 Mass. 87.

137 Mass. 487.

Hearing by
one justice.
1859, 237, § 1.
G. S. 113, § 6.
P. S. 151, § 11.

1 SECTION 18. For hearings, and for making, entering and modi-
2 fying orders and decrees in equity causes, by one justice, and for
3 issuing writs in such causes, the courts shall always be open in every
4 county, except on legal holidays; and all such proceedings shall be
5 considered as taking place in court and not in chambers. The
6 supreme judicial court shall establish rule days for the transaction
7 of business pertaining to jurisdiction in equity.

Court always
open.
Rule days.
1826, 109, § 1.
1827, 26.
R. S. 81, §§ 20,
21.
1859, 237, § 7.
G. S. 113, § 7.
P. S. 151, § 12.
1883, 223, § 4.
5 Allen, 81.

1 SECTION 19. A party who is aggrieved by a final decree of a
2 justice of the supreme judicial court or a final decree of the superior
3 court may, within thirty days after the entry thereof, appeal there-
4 from. An appeal from a final decree of a justice of the supreme
5 judicial court shall be entered on the docket of that court, and an
6 appeal from a final decree of the superior court shall forthwith be
7 entered in the supreme judicial court. The copies and papers in
8 the cause shall be prepared by the clerk of the court and transmitted
9 to the supreme judicial court and entered on the docket of the full
10 court. - When such appeals have been entered as aforesaid, all pro-
11 ceedings under such decree shall be stayed, and the cause shall
12 thereupon be pending before the full court, which shall hear and
13 determine the same, and affirm, reverse or modify the decree appealed
14 from. Upon the reversal of a final decree, the court may remand
15 the cause to a justice of the supreme judicial court or to the superior
16 court, with such directions as are necessary and proper further to
17 proceed therein, or the court may refer it to a master or take such
18 other order relative to future proceedings therein as equity and the
19 just and speedy determination of the case require.

Appeal from
final decree.
1859, 237, § 2.
G. S. 113, § 8.
P. S. 151, § 13.
1883, 223, § 2.
114 Mass. 272.
115 Mass. 119.
116 Mass. 230.
120 Mass. 392.
121 Mass. 568.
125 Mass. 180.
128 Mass. 11.
137 Mass. 487.
150 Mass. 66.
157 Mass. 68.
160 Mass. 444.
161 Mass. 593.
171 Mass. 568.

1 SECTION 20. The clerk of the court for the commonwealth shall
2 enter appeals in equity and probate matters on a separate equity
3 and probate docket. G. S. 113, § 14. P. S. 151, § 14. 1883, 223, § 2. 150 Mass. 56.

Separate dock-
et for equity
and probate
appeals.
1859, 196, § 53.

1 SECTION 21. Upon an appeal from a final decree, the justice of
2 either court by whom it was made may make such orders for the
3 appointment of receivers, and of injunction or prohibition, or for
4 continuing the same in force, as are needful for the protection of the
5 rights of parties, until the appeal shall be heard by the full court;
6 subject, however, to be modified or annulled by the order of the
7 full court upon motion, after the appeal is taken.

Injunction or
receiver pend-
ing appeal.
1859, 237, § 3.
G. S. 113, § 9.
P. S. 151, § 15.
1883, 223, § 2.

Modification of
decree of supe-
rior court.
1883, 223, § 6.
1901, 244.

SECTION 22. After an appeal has been taken from a decree of the superior court, the full court may, by an order, on terms or otherwise, suspend the execution or operation of the decree appealed from, pending the appeal, and may modify or annul any order made for the protection of the rights of the parties pending the appeal; but, until such order has been modified or annulled, the justice of the superior court by whom the order or decree appealed from was made, or any other justice of said court, may make any proper interlocutory orders, pending such appeal, including orders for the appointment of receivers, of injunction, of prohibition, and orders for continuing in force such orders previously made, or for modifying or dissolving them. The justice who makes any such interlocutory orders may enforce them by appropriate proceedings, pending the appeal.

Report of
facts.
1883, 223, § 7.
1893, 61.
173 Mass. 170.
174 Mass. 299.

SECTION 23. Upon an appeal from a decree of either court, the justice by whom the decree was made shall report the material facts found by him, if so requested by the appellant within four days after the appellant has been notified of the entry of the decree; otherwise, such report shall be in the discretion of the justice.

—of testimony
upon appeal.
1859, 237, § 6.
G. S. 113, § 21.
P. S. 151, § 26.
1883, 223, § 2.
13 Allen, 209.
115 Mass. 336.
116 Mass. 230.
117 Mass. 403.
130 Mass. 20.

SECTION 24. Upon an appeal, the testimony of witnesses who have been examined orally before a justice of either court shall, at the request of any party made before any evidence is offered, be reported to the full court. The courts shall provide by general rules for some convenient and effectual means of having the same reported by the justice by whom the case is heard or by a person designated by him for that purpose. No oral evidence shall be exhibited to the full court, but the cause shall be heard on appeal upon the same evidence as on the original hearing. In cases of accident or mistake, the full court may grant leave to parties to exhibit further evidence, and may provide by general rules or special order for the conditions under and modes by which such evidence shall be taken.

Interlocutory
decree, appeal
from.
1859, 237, § 4.
G. S. 113, § 10.
P. S. 151, § 16.
1883, 223, § 2.
103 Mass. 499.
115 Mass. 119.
125 Mass. 24.
165 Mass. 1.

SECTION 25. A party who is aggrieved by an interlocutory decree of a justice of either court may, in like manner, appeal to the full court; but the appeal shall not suspend the execution of such decree, except as provided in section twenty-two, nor transfer to the full court the entire cause or any matter therein except the question whether the interlocutory decree appealed from shall be affirmed, reversed or modified.

—revision of.
1859, 237, § 5.
G. S. 113, § 11.
P. S. 151, § 17.
1883, 223, § 2.
127 Mass. 28.
169 Mass. 417.

SECTION 26. Interlocutory decrees which are not appealed from shall be open to revision upon appeals from final decrees, so far only as it appears to the full court that such final decrees are erroneously affected thereby.

—report of, to
full court.
G. S. 113, § 12.
P. S. 151, § 18.
1883, 223, § 2.
115 Mass. 119.
120 Mass. 281.
165 Mass. 1.

SECTION 27. If, upon making an interlocutory decree or order, the justice is of opinion that it so affects the merits of the controversy that the matter ought, before further proceedings, to be determined by the full court, he may report the question for that purpose, and stay all further proceedings except such as are necessary to preserve the rights of the parties.

1 SECTION 28. A party who has by accident or mistake omitted
 2 to claim an appeal from a final decree within the time prescribed
 3 therefor may, within one year after the entry of the decree from
 4 which he desires to appeal, petition the full court for leave to ap-
 5 peal, which may be granted upon terms.

Petition for
leave to appeal.
1859, 237, § 10.
G. S. 113, § 13.
P. S. 151, § 19.
1883, 223, § 2.
121 Mass. 568.

1 SECTION 29. A justice of either court by whom a case is heard
 2 for final decree may reserve and report the evidence and all ques-
 3 tions of law therein for the consideration of the full court; and
 4 thereupon like proceedings shall be had as upon appeals from final
 5 decrees.

Reservation
for full court.
1859, 237, § 11.
G. S. 113, § 15.
P. S. 151, § 20.
1883, 223, § 2.
141 Mass. 150.

1 SECTION 30. If the defendant in a suit in equity in the superior
 2 court, or a person in his behalf, within thirty days after the day for
 3 appearance, makes affidavit of his belief that the matter involved in
 4 the suit equals four thousand dollars in value, that his interest alone
 5 or with the interest of any other defendant having a joint or common
 6 interest with him equals said value and that he has a substantial
 7 defence, and of his intention to bring the cause to a hearing, the
 8 case, with the papers therein shall, upon his request and at his ex-
 9 pense, be forthwith removed to the supreme judicial court where
 10 it shall proceed as if originally commenced therein. Before such
 11 removal, the superior court may make such orders for the appoint-
 12 ment of receivers, and of injunction or prohibition, or for continu-
 13 ing the same in force, as are necessary for the protection of the
 14 rights of the parties until the case shall be heard by the supreme
 15 judicial court; subject, however, to be modified or annulled by the
 16 order of that court upon motion after the case has been removed.

Removal of
suit from supe-
rior court.
1883, 223, § 8.

1 SECTION 31. A justice of the supreme judicial court may, if upon
 2 motion it appears that a suit in equity pending in the superior court
 3 ought to be heard with a suit or cross suit in equity pending in the
 4 supreme judicial court, order the suit to be removed at the expense
 5 of the applicant from the superior court to the supreme judicial
 6 court, where it shall proceed as if originally commenced therein.

— for hearing
with cross suit.
1883, 223, § 9.

1 SECTION 32. A justice of either of said courts shall not dissolve
 2 an injunction which has been issued by the other court, or by a
 3 justice thereof, or interpose in any proceeding in the equity jurisdic-
 4 tion of the other court, except as provided in sections twenty-two,
 5 thirty and thirty-one.

Control of case
by court hav-
ing jurisdic-
tion.
1883, 223, § 12.

1 SECTION 33. Every order and decree shall bear date of the day
 2 when it is actually entered by the clerk, and, at the time of the
 3 entry, he shall note such date upon the order or decree and upon
 4 the docket.

Decree, etc., to
bear date of
entry.
1859, 237, § 8.
G. S. 113, § 16.
P. S. 151, § 21.

1883, 223, § 2.

5 Allen, 81.

1 SECTION 34. No process for the execution of a final decree of
 2 either court shall issue until the expiration of thirty days after the
 3 entry thereof, unless all parties against whom such decree is made
 4 waive an appeal by a writing filed with the clerk or by causing an
 5 entry thereof to be made on the docket.

Execution on
final decree.
1859, 237, § 9.
G. S. 113, § 17.
P. S. 151, § 22.
1883, 223, § 2.
138 Mass. 209.

Hearing cases
pending in an-
other county.
1826, 109, §§ 1, 2.
R. S. 81, §§ 22-
24.
G. S. 113, §§ 18-
20.
P. S. 151, §§ 23-
25.
1883, 223, § 2.
5 Allen, 81.
162 Mass. 450.

SECTION 35. A justice of either court or the full court may, if necessary, hear and determine cases pending in a county other than that in which such justice or court is sitting, or any motion therein : but a motion shall not be so heard nor a decree or order so made until reasonable notice thereof has been given to the adverse party or his counsel ; and either party may transmit his reasons in writing for or against the application to the court or justice, who shall examine the same and proceed thereon as if the parties were present. All orders and decrees made on such hearings shall be transmitted to the clerk in the proper county, and be entered by him.

Jury issues.
1-23, 24.
R. S. 83, § 46.
1859, 237, § 13.
G. S. 113, § 22.
P. S. 151, § 27.
1885, 116, § 1.
123 Mass. 540.
137 Mass. 422.

SECTION 36. The supreme judicial court, upon request of a party to an equity cause pending therein, may, in its discretion, frame issues of fact to be tried by a jury and order the same to be tried in that court or in the superior court in the county in which such cause is pending, or upon the request of all parties in any other county.

142 Mass. 161.

143 Mass. 543.

Jury may be
summoned.
1874, 339, § 3.
P. S. 151, § 28.

SECTION 37. If there is no regular sitting of the supreme judicial court within three months after the framing of such issues, a justice thereof may order the clerk of the courts for the county in which the cause is pending to summon a jury to try such issues, and the proceedings at such trial shall be in all respects the same as in a trial at a regular sitting.

Jury issues in
superior
court.
1883, 223, § 16.

SECTION 38. The superior court may, upon request of a party to an equity cause pending therein, frame issues of fact to be tried by a jury and order them to be tried in the county in which such cause is pending.

Writs of seisin
and execution.
R. S. 74, § 12;
118, § 43.
G. S. 113, § 23.

SECTION 39. The courts may issue writs of seisin and execution in common form if such process is appropriate for the enforcement of a decree in equity.

P. S. 151, § 29.

1883, 223, § 2.

106 Mass. 500.

Continuous
sitting in Bos-
ton.
1859, 196, § 50.
G. S. 113, § 24.
P. S. 151, § 30.

SECTION 40. A justice of the supreme judicial court and a justice of the superior court shall, at all convenient times, sit in Boston for the purpose of hearing and determining suits in equity arising in any county.

Hearings at
chambers for
western coun-
ties.
1874, 339, § 1.
P. S. 151, § 31.

SECTION 41. A justice of the supreme judicial court shall sit at Springfield, on the first Monday of February, June, August and December, for the purpose of hearing such matters in equity as may be heard and determined at chambers, which arise in the counties of Berkshire, Franklin, Hampshire and Hampden.

Taking papers
from files.
1859, 196, § 50.
G. S. 113, § 25.
P. S. 151, § 32.
1883, 223, § 2.

SECTION 42. The original papers in a suit in equity pending in either court may be taken from the files in any county by the counsel of record of either party, for use before the court, upon leaving a memorandum and receipt on such files, containing a short description of the papers so taken.

CHAPTER 160.

OF POLICE, DISTRICT AND MUNICIPAL COURTS.

SECTIONS 1-5. — Police, District and Municipal Courts.

SECTIONS 6-17. — Justices and Clerks.

SECTIONS 18-23. — Civil Jurisdiction.

SECTIONS 24-38. — Criminal Jurisdiction.

SECTIONS 39-48. — Sessions and Proceedings.

SECTIONS 49-54. — Municipal Courts.

SECTIONS 55-61. — Municipal Court of the City of Boston.

SECTIONS 62-66. — Constables and Court Officers

SECTIONS 67-71. — Salaries.

POLICE, DISTRICT AND MUNICIPAL COURTS.

- 1 SECTION 1. The cities and towns of Chicopee, Fitchburg, Hol- Police courts.
2 yoke, Lawrence, Lee, Lowell, Lynn, Marlborough, Newton, Somer- 1833, 64, § 1.
3 ville and Williamstown shall each continue to be a judicial district R. S. 87, § 29.
4 under the jurisdiction of the police court thereof. 1848, 260, § 1.
1849, 86, § 1.
1855, 83, § 1; 312,
§ 1; 463, § 1.
- G. S. 116, § 1. 1871, 173, § 1. 1876, 195, § 1. 1882, 233, § 3.
1868, 124, § 1. 1872, 233, § 1. P. S. 154, § 1. 1893, 396, § 69.
- 1 SECTION 2. The judicial districts of the remaining police courts Police and dis-
2 and of the several district courts shall continue to comprise the fol- trict courts.
3 lowing cities and towns, respectively : — P. S. 154, § 2.
1893, 396, § 69.
- 4 The police court of Brockton, held at Brockton ; Brockton, Bridge- Brockton.
5 water, East Bridgewater and West Bridgewater. 1874, 316, § 1.
1875, 23.
- 1885, 155, § 1. 1887, 322.
- 6 The police court of Chelsea, held at Chelsea ; Chelsea and Revere. Chelsea.
G. S. 116, § 1. 1874, 201, § 1. 1855, 26, § 1.
- 7 The police court of Newburyport, held at Newburyport ; New- Newburyport.
8 buryport and Newbury. G. S. 116, § 1. 1879, 234, § 5. 1833, 192, § 1.
R. S. 87, § 29.
- 9 The police court of Springfield, held at Springfield ; Springfield. Springfield.
10 Agawam, Longmeadow, East Longmeadow, Hampden, West Spring- 1852, 94, § 22.
11 field and Wilbraham. G. S. 116, § 1. 1874, 180, § 2. 1878, 88, § 7.
- 12 The first district court of Barnstable, held at Barnstable and First Barn-
13 Bourne ; Barnstable, Bourne, Yarmouth, Sandwich, Falmouth and stable.
14 Mashpee. 1890, 177, § 1.
- 15 The second district court of Barnstable, held at Harwich and Second Barn-
16 Provincetown ; Provincetown, Truro, Wellfleet, Eastham, Orleans, stable.
17 Brewster, Chatham, Harwich and Dennis. 1890, 177, § 2.
- 18 The district court of central Berkshire, held at Pittsfield ; Pitts- Central Berk-
19 field, Hancock, Lanesborough, Peru, Hinsdale, Dalton, Washing- shire.
20 ton and Richmond. 1850, 310, § 1.
1869, 416, § 1. 1881, 105. G. S. 116, § 1.
- 21 The district court of northern Berkshire, held at North Adams ; Northern
22 North Adams, Clarksburg and Florida. Berkshire.
1854, 277, § 1.
- G. S. 116, § 1. 1870, 201, § 1. 1878, 143 § 6.
- 23 The district court of southern Berkshire, held at Great Barring- Southern
24 ton ; Sheffield, Great Barrington, Egremont, Alford, Mount Wash- Berkshire.
25 ington, Monterey and New Marlborough. 1870, 202, § 1.
- 26 The fourth district court of Berkshire, held at Adams ; Adams, Fourth
27 Cheshire, Savoy and Windsor. Berkshire.
1895, 176, § 1.

First Bristol. 1858, 84, § 1. G. S. 116, § 1. 1874, 203, § 1. 1877, 189.	The first district court of Bristol, held at Taunton and Attleborough; Taunton, Rehoboth, Berkley, Dighton, Seekonk, Attleborough, Norton, Mansfield, Easton, Raynham and North Attleborough.	28 29 30
Second Bristol. 1852, 304, § 1. G. S. 116, § 1.	The second district court of Bristol, held at Fall River; Fall River, Freetown, Somerset and Swansea.	31 32
Third Bristol. 1834, 33. G. S. 116, § 1.	The third district court of Bristol, held at New Bedford; New Bedford, Fairhaven, Acushnet, Dartmouth and Westport.	33 34
1878, 152.	The second and third district courts of Bristol shall have concurrent jurisdiction in Westport and Freetown.	35 36
Dukes County. 1898, 287, § 1.	The district court of Dukes County, held at Cottage City, Edgartown and Tisbury; Edgartown, Cottage City, Tisbury, West Tisbury, Chilmark, Gay Head and Gosnold.	37 38 39
First Essex. 1874, 224, § 1.	The first district court of Essex, held at Salem; Salem, Beverly, Danvers, Hamilton, Middleton, Topsfield and Wenham.	40 41
Second Essex. 1888, 193, § 1.	The second district court of Essex, held at Amesbury; Amesbury and Merrimac.	42 43
Central northern Essex. 1854, 24, § 1.	The central district court of northern Essex, held at Haverhill; Haverhill, Groveland, Georgetown and Boxford.	44 45
	G. S. 116, § 1. 1861, 207, § 1. 1866, 296. 1867, 316. 1896, 365. 1899, 255.	
Eastern Essex. 1858, 136, § 1. G. S. 116, § 1.	The district court of eastern Essex, held at Gloucester; Gloucester, Rockport and Essex.	46 47
Franklin. 1896, 353, § 1.	The district court of Franklin, held at Greenfield, at Turner's Falls in the town of Montague, and at Shelburne Falls in the towns of Shelburne and Buckland; the county of Franklin except the towns of Orange, Erving, Warwick, Wendell and New Salem.	48 49 50 51
Eastern Franklin. 1899, 391, § 1.	The district court of eastern Franklin, held at Orange; Orange, Erving, Warwick, Wendell and New Salem.	52 53
Eastern Hampden. 1872, 277, § 1.	The district court of eastern Hampden, held at Palmer; Palmer, Brimfield, Monson, Holland and Wales.	54 55
Western Hampden. 1886, 190, §§ 1, 3.	The district court of western Hampden, held at Westfield and Chester; Westfield, Chester, Granville, Southwick, Russell, Blandford, Tolland and Montgomery.	56 57 58
Hampshire. 1882, 227, §§ 1, 3.	The district court of Hampshire, held at Northampton, Amherst, Cummington, Belchertown, Huntington, Ware and Easthampton; the county of Hampshire.	59 60 61
Central Middlesex. 1874, 315, § 1.	The district court of central Middlesex, held at Concord; Acton, Bedford, Carlisle, Concord, Lincoln, Maynard, Stow and Lexington.	62 63
First northern Middlesex. 1872, 269, § 1.	The first district court of northern Middlesex, held at Ayer; Ayer, Groton, Pepperell, Townsend, Ashby, Shirley, Westford, Littleton and Boxborough.	64 65 66
First eastern Middlesex. 1874, 302, § 1. 1893, 350.	The first district court of eastern Middlesex, held at Malden; North Reading, Wakefield, Melrose, Malden, Everett and Medford.	67 68 69
Second eastern Middlesex. 1881, 128, § 1.	The second district court of eastern Middlesex, held at Waltham; Watertown, Weston and Waltham.	70 71
Third eastern Middlesex. 1854, 335, § 1.	The third district court of eastern Middlesex, held at Cambridge; Cambridge, Arlington and Belmont.	72 73
	G. S. 116, § 1. P. S. 154, § 1. 1882, 233, § 1.	
Fourth eastern Middlesex. 1882, 233, § 2. 1888, 59. 1889, 312.	The fourth district court of eastern Middlesex, held at Woburn; Woburn, Winchester, Burlington, Wilmington, Stoneham and Reading.	74 75 76
First southern Middlesex. 1874, 35, § 1. 1881, 223. 1882, 169.	The first district court of southern Middlesex, held at Framingham; Ashland, Framingham, Holliston, Sherborn, Sudbury and Wayland.	77 78 79

- 80 The district court of northern Norfolk, held at Dedham ; Dedham, Northern
81 Hyde Park, Dover, Norwood, Westwood, Medfield, Needham and Norfolk.
82 Wellesley. 1898, 478.
- 83 The district court of East Norfolk, held at Quincy ; Randolph, East Norfolk.
84 Braintree, Cohasset, Weymouth, Quincy, Holbrook and Milton. 1872, 289, § 1.
1875, 6.
- 85 The district court of southern Norfolk, held at Stoughton and Southern
86 Canton ; Stoughton, Canton, Avon and Sharon. Norfolk.
1891, 273, §§ 1, 3.
- 87 The district court of western Norfolk, held at Franklin and Wal- Western
88 pole ; Bellingham, Foxborough, Franklin, Medway, Millis, Norfolk, Norfolk.
89 Walpole and Wrentham. 1898, 497, § 1.
- 90 The second district court of Plymouth, held at Abington and Second
91 Hingham ; Abington, Whitman, Rockland, Hingham, Hull, Han- Plymouth.
92 over, Scituate, Norwell and Hanson. 1874, 350, § 1.
1875, 36, § 10.
1879, 248, § 3.
- 93 The third district court of Plymouth, held at Plymouth ; Plymouth, Third
94 Kingston, Plympton, Pembroke, Duxbury and Marshfield. Plymouth.
1874, 350, § 1.
1879, 248, § 4.
- 95 The fourth district court of Plymouth, held at Middleborough and Fourth
96 Wareham ; Middleborough, Wareham, Lakeville, Marion, Mattapoi- Plymouth.
97 sett and Rochester. 1874, 350, § 1.
1880, 80.
- 98 The East Boston district court, held at East Boston ; Winthrop East Boston.
99 and the district and territory included in wards one and two of 1874, 271, § 14.
100 the city of Boston as such wards existed on the first day of March 1877, 165.
101 in the year eighteen hundred and eighty-six. 1882, 146.
1886, 15, § 2.
- 102 The central district court of Worcester, held at Worcester ; Central
103 Worcester, Millbury, Sutton, Auburn, Leicester, Paxton, West Worcester.
104 Boylston, Holden and Shrewsbury. 1872, 199, § 1.
- 105 The first district court of northern Worcester, held at Athol and First northern
106 Gardner ; Athol, Petersham, Phillipston, Royalston, Templeton, Worcester.
107 Gardner and Hubbardston. 1884, 215, § 1.
- 108 The first district court of eastern Worcester, held at Westborough First eastern
109 and Grafton ; Southborough, Westborough and Grafton. Worcester.
1872, 200, § 1.
- 110 The second district court of eastern Worcester, held at Clinton ; Second eastern
111 Clinton, Berlin, Bolton, Boylston, Harvard, Lancaster, North- Worcester.
112 borough and Sterling. 1874, 337, § 1.
1896, 240.
- 113 The first district court of southern Worcester, held at Southbridge First southern
114 and Webster ; Sturbridge, Southbridge, Charlton, Dudley, Oxford Worcester.
115 and Webster. 1871, 391, § 1.
- 116 The second district court of southern Worcester, held at Black- Second south-
117 stone and Uxbridge ; Blackstone, Uxbridge, Douglas and North- ern Worcester.
118 bridge. 1882, 201, § 1.
- 119 The third district court of southern Worcester, held at Milford ; Third southern
120 Milford, Mendon, Upton and Hopedale. Worcester.
G. S. 116, § 1. 1872, 152, § 1. 1854, 60, § 1.

1 SECTION 3. No police court shall hereafter be established in a Police courts,
2 town which has less than ten thousand inhabitants. where not to
be established.

G. S. 116, § 2.

P. S. 154, § 3.

1 SECTION 4. The judicial districts of the municipal courts of Municipal
2 Boston shall continue as heretofore provided by law, and shall, courts of
3 respectively, embrace the districts and territory included in the Boston.
4 following named wards of said city as such wards existed on the first 1862, 107.
5 day of February in the year eighteen hundred and eighty-two :— 1866, 279, § 1.
6 The municipal court, 1870, 333.
7 Of the city of Boston ; wards six, seven, eight, nine, ten, eleven, 1873, 286, § 4.
8 twelve, sixteen, seventeen and eighteen : 1874, 271, § 14.
1875, 243, § 4.
1876, 240, 242.
P. S. 154, § 42.
154 Mass. 128.

Of the Charlestown district; wards three, four and five :	9
Of the South Boston district: wards thirteen, fourteen and fifteen :	10
Of the Roxbury district; wards nineteen, twenty, twenty-one and	11
twenty-two :	12
Of the Brighton district; ward twenty-five :	13
Of the West Roxbury district; ward twenty-three :	14
Of the Dorchester district; ward twenty-four.	15

Municipal
court of Brook-
line.

SECTION 5. The town of Brookline shall continue to be a judi-	1
cial district under the jurisdiction of the municipal court thereof.	2

1882, 233, § 4.

1898, 214.

JUSTICES AND CLERKS.

Composition of
courts. To be
courts of
record. Seal.
R. S. 87, § 30.
1853, 179, § 3.
1855, 270, § 5.
G. S. 116, §§ 3,
26.
P. S. 154, §§ 4,
30.

SECTION 6. Police, district and municipal courts shall be courts	1
of record, and, except the municipal court of the city of Boston, shall	2
consist of one justice and two special justices. Each of said courts	3
shall have a seal, which shall be in the custody of its clerk, or of	4
the justice if it has no clerk, and which shall be affixed to all proce-	5
sses issued by said courts which require a seal.	6

1893, 396, §§ 2, 58.
13 Met. 251.

3 Cush. 584.
134 Mass. 313.

168 Mass. 234.
172 Mass. 430.

Administra-
tion of oaths.
R. S. 85, § 36.
G. S. 120, § 49.
P. S. 154, § 11;
155, § 2.

SECTION 7. Justices and special justices of said courts may,	1
in or out of court, administer oaths in all cases in which an oath	2
is required, unless otherwise expressly provided.	3

1893, 396, § 60.

145 Mass. 225.

Contempts.
R. S. 85, § 33.
G. S. 120, § 50.
P. S. 154, § 11;
155, § 68.
1893, 396, § 61.
2 Gray, 123.

SECTION 8. They may punish such disorderly conduct as inter-	1
rupts any judicial proceedings before them or is a contempt of their	2
authority or persons, by a fine of not more than fifty dollars or by	3
imprisonment in jail for not more than fifteen days; and processes	4
issued in such cases may be served by any officer qualified to serve	5
criminal process.	6

Clerks, ap-
pointment and
tenure.
1821, 109, § 5.
R. S. 87, § 18.
G. S. 116, § 4.
1866, 163.

SECTION 9. Clerks of police, district and municipal courts	1
shall, except as provided in the three following sections, be ap-	2
pointed by the governor, with the advice and consent of the council,	3
for the term of five years.	4

1877, 210, § 1.

P. S. 154, §§ 5, 58.

1893, 396, § 3.

Justice to act
or appoint.
1838, 147, § 2.
1854, 335, § 12.
G. S. 116, §§ 5,
23.
P. S. 154, §§ 6,
27.
1893, 396, §§ 4, 8.
2 Gray, 4.

SECTION 10. The justice of a police or district court for which	1
no clerk is required by law shall keep a record of its proceedings	2
and perform all other duties of a clerk, or he may appoint a clerk,	3
who shall be paid by him, for whose official acts he shall be re-	4
sponsible and who shall hold his office during the pleasure of such	5
justice.	6

Appointment
of assistants.
1821, 109, § 5.
R. S. 87, §§ 23,
24.
G. S. 116, § 6.
1874, 36, §§ 11,
12; 154.
1876, 227, § 3.
P. S. 154, § 7.
1893, 396, § 5.

SECTION 11. The clerk of a police, district or municipal court	1
may, subject to the approval of the justice, from time to time ap-	2
point one or more assistant clerks, who shall be removable at his	3
pleasure or at the pleasure of the court, for whose official acts the	4
clerk shall be responsible and who shall be paid by him unless	5
they receive salaries which may be allowed and fixed by law.	6

111 Mass. 420, 422.

153 Mass. 159.

1 SECTION 12. In case of the absence, death or removal of a clerk
2 of a police, district or municipal court, the court may appoint a
3 clerk pro tempore, who shall act until the clerk resumes his duties
4 or until the vacancy is filled.

16 Gray, 88.

9 Allen, 488.

153 Mass. 211.

Clerks pro
tempore.
R. S. 87, § 18.
G. S. 116, § 7.
P. S. 154, § 8.
1893, 396, § 6.

1 SECTION 13. The clerks, assistant clerks and clerks pro tempore
2 of said courts shall be sworn. They or one of them shall attend all
3 sessions of the court, unless otherwise expressly provided, and shall
4 keep a record of all its proceedings. If the office of clerk is estab-
5 lished by law, the clerk may make and issue warrants, writs and
6 processes, shall make all returns of the court, tax all bills of costs and
7 receive all fines, forfeitures, fees and costs accruing from the business
8 of the court in civil and criminal cases, including fees for blanks and
9 copies.

P. S. 154, §§ 9, 33.

1893, 396, § 8.

153 Mass. 218.

Clerks to be
sworn, keep
records, etc.
1821, 109, § 5.
1822, 12.
R. S. 87, §§ 19,
21, 37.
1855, 310, § 7.
1855, 270, § 4;
321, § 4, *ib.*
1856, 172, § 3.
1857, 264, § 3.
G. S. 116, §§ 8,
23, 28.

1 SECTION 14. Justices of police, district and municipal courts
2 shall prescribe reasonable daily office hours for the clerks of their
3 respective courts during which the offices of the clerks shall be re-
4 quired to be open. Such hours shall be fixed with reference to the
5 business of said courts and with reference to the convenience of the
6 public and of attorneys. The office hours as fixed shall be posted
7 in a conspicuous place in each of said offices, and shall be set forth
8 in the printed rules of said courts. Clerks shall also keep their
9 offices open whenever the court so orders.

Office hours of
clerks.
1893, 396, § 8.
1900, 281.

1 SECTION 15. The clerk of any of said courts or, if no clerk is
2 required by law, the justice, before entering upon the performance
3 of his official duties, shall give bond in the sum of one thousand
4 dollars to the treasurer of the county, with sufficient sureties to be
5 approved by a justice of the superior court, conditioned to account
6 for and pay over as and when required by law all fines, forfeitures,
7 fees and other money received by him in the exercise of his office.
8 A failure so to account or pay over shall be a breach of the con-
9 dition of his bond, and a failure to give such bond shall be a suffi-
10 cient cause for his removal from office.

Bond of clerk
or justice.
1821, 109, § 5.
1822, 12.
R. S. 87, § 19.
1855, 321, § 4.
G. S. 116, § 8.
1874, 394, § 3.
P. S. 154, § 38.
1893, 396, § 7.
153 Mass. 218.

1 SECTION 16. A justice, clerk or assistant clerk of any of said
2 courts shall not be retained or employed as attorney in an action,
3 complaint or proceeding pending in his court, or which has been
4 examined or tried therein; and a special justice shall not be so
5 retained or employed in any case in which he acts or has acted as
6 justice.

G. S. 116, § 9.

P. S. 154, § 10.

1893, 396, § 10.

Justice, clerk,
etc., not to act
as attorney.
1815, 49.
1821, 109, § 5.
R. S. 87, §§ 25,
44.
1855, 321, § 11.
1857, 264, § 4.

1 SECTION 17. A justice, special justice acting in the place of the
2 justice, clerk or assistant clerk of any of said courts shall not
3 receive any fee or compensation to his own use, other than his
4 regular salary or allowance, for making complaints or issuing in
5 any capacity warrants, subpoenas or other criminal processes which
6 he is authorized by law to issue, or for any official services per-
7 formed by him in court. A clerk or assistant clerk shall not receive,
8 in addition to his salary, any fee or compensation for making out
9 bail papers, or for admitting a prisoner to bail while the court is in
10 session or during the hours when his office is required to be open.

— nor to
receive ad-
ditional fees,
etc.
1852, 159.
1858, 103, § 3.
G. S. 116, § 34.
1877, 210, §§ 2, 7.
1879, 264.
P. S. 154, §§ 65,
66.
1893, 396, § 11.

CIVIL JURISDICTION.

Original exclu-
sive jurisdic-
tion.1821, 109.
R. S. 87, §§ 11,
34.
1852, 46.
1857, 51.
G. S. 116, §§ 10,
18.
1877, 210, § 4.
P. S. 154, § 11;
155, § 12.
1893, 396, § 12.
1894, 431.

SECTION 18. Police, district and municipal courts shall have original jurisdiction, exclusive of the superior court, of actions of contract, tort or replevin, in which the debt or damages demanded or the value of the property alleged to be detained does not exceed one hundred dollars; of actions of replevin for beasts distrained or impounded in order to recover a penalty or forfeiture supposed to have been incurred by their going at large, or to obtain satisfaction for damages alleged to have been done by them; and of summary process under the provisions of chapter one hundred and eighty-one.

Original and
concurrent
jurisdiction.1871, 144.
1877, 210, § 4.
P. S. 154, § 11;
155, § 13.
1893, 396, § 12.
1894, 431.
164 Mass. 145.

SECTION 19. Police, district and municipal courts, except the municipal court of the city of Boston, shall have original and concurrent jurisdiction with the superior court of actions of contract, tort or replevin in which the debt or damages demanded or the value of the property alleged to be detained is more than one hundred and does not exceed one thousand dollars; and of petitions to enforce liens under the provisions of chapter one hundred and ninety-seven, if the amount of the claim does not exceed one thousand dollars.

Jurisdiction
exclusive in
district, when.R. S. 87, § 34.
G. S. 116, § 18.
P. S. 154, § 13.
1893, 396, § 13.
1894, 398, § 1.
161 Mass. 440.
164 Mass. 144.

SECTION 20. The jurisdiction of a police, district or municipal court shall exclude the jurisdiction of a trial justice, if any of the parties lives or has his usual place of business in its district or if, in an action of summary process under the provisions of chapter one hundred and eighty-one, the land in controversy is situated in its district.

Seire facias
against bail.1753-4, 18, § 3.
1783, 32, § 9; 42,
§ 4.
1803, 132, § 1.
R. S. 85, § 16.
G. S. 120, § 3.

SECTION 21. Said courts may issue writs of seire facias against executors and administrators upon a suggestion of waste after a judgment against them and also against bail taken in a civil action before them, and proceed to judgment and execution as the superior court might do in like cases.

P. S. 154, § 11; 155, § 14.

1893, 396, § 14.

1894, 431.

— service of
such writs.1803, 132, § 1.
R. S. 85, § 17.
G. S. 120, § 4.

SECTION 22. Such writs shall be served not less than seven days before the return day, which shall be not more than sixty days after the date thereof, and they may run into any county in which the defendant may be found.

P. S. 154, § 11; 155, § 15.

1893, 396, § 15.

1894, 431.

Limit of juris-
diction in such
case.1803, 132, § 1.
R. S. 85, § 18.
G. S. 120, § 5.
P. S. 154, § 11;
155, § 16.
1893, 396, § 16.
1894, 431.

SECTION 23. Said courts shall have jurisdiction of actions upon such writs although the debt and costs on the original judgment together exceed one thousand dollars or, in the municipal court of the city of Boston, exceed two thousand dollars; and judgment and execution may be awarded by the court for the whole amount due to the plaintiff with costs of the new action.

CRIMINAL JURISDICTION.

Criminal
jurisdiction.1821, 109.
R. S. 87, §§ 3, 32.
1848, 331, § 4.
1854, 277, § 2.
1855, 448, § 1.

SECTION 24. Police, district and municipal courts shall have original jurisdiction, concurrent with the superior court, of misdemeanors committed within their respective counties, except conspiracies and libels, and unless otherwise expressly provided, they

5 may impose the same penalties as the superior court in like cases. 1858, 45, § 1.
 6 Their jurisdiction of crimes committed in their respective judicial G. S. 116, §§ 12, 13.
 7 districts shall, except as provided in section forty-six of chapter 1866, 279, § 8.
 8 two hundred and eighteen, exclude the jurisdiction of other police, 1874, 271, § 5.
 9 district and municipal courts and trial justices. P. S. 154, §§ 17, 18, 50.
 1885, 322.
 1893, 396, § 34.

1894, 431.
 138 Mass. 489.

144 Mass. 170.
 150 Mass. 63.

151 Mass. 62.
 156 Mass. 489.

1 SECTION 25. They shall have jurisdiction, as aforesaid, of fel- Jurisdiction of
 2 onies which are not punishable by death or imprisonment for life felonies by
 3 committed by juvenile offenders under seventeen years of age ; and, juvenile
 4 upon their conviction may sentence them to any punishment author- offenders.
 5 ized by law for such crime, except imprisonment in the state prison, 1872, 358.
 6 or may commit them to any institution established by law for the 1877, 211, § 6.
 7 reformation of juvenile offenders, or may bind them over for trial in 1880, 183.
 8 the superior court. P. S. 154, § 11;
 155, § 49.
 1893, 396, § 35.
 1894, 431.
 127 Mass. 450

1 SECTION 26. They shall have jurisdiction, as aforesaid, of the — of assault
 2 crime of assault and battery ; including assault and battery with a and battery.
 3 weapon dangerous to life if no intent to commit a felony is shown, 1892-3, 18, § 6.
 4 unless it is committed in the commission or attempted commis- 1783, 51, § 1.
 5 sion of a felony, or unless the person assaulted is maimed or his 1794, 26, § 2.
 6 life is endangered ; and, upon conviction of the defendant, may R. S. 85, § 24.
 7 punish him by a fine of not more than one hundred dollars or by 1853, 196, § 1.
 8 imprisonment for not more than one year. If the defendant is a 1855, 448, § 2.
 9 female above the age of seventeen years, the imprisonment may be 1858, 45, § 1.
 10 in the reformatory prison for women for one year. G. S. 116, § 13.
 1881, 189.
 P. S. 154, § 18.
 1887, 293, § 1.
 1893, 396, § 36.
 1894, 431.
 1895, 218.
 116 Mass. 349.
 132 Mass. 8.

150 Mass. 502.

165 Mass. 447.

1 SECTION 27. They shall have jurisdiction, as aforesaid, of the — of breaches
 2 crime of disturbing the peace to the great damage and common of the peace.
 3 nuisance of persons in the place in which the disturbance occurs ; 1892-3, 18, § 6.
 4 of affrays and riots ; of going armed offensively to the terror of the 1783, 51, § 1.
 5 people ; of uttering menaces or threatening speeches and of being 1794, 26, § 2.
 6 a dangerous and disorderly person ; and, upon conviction of the R. S. 85, § 24.
 7 defendant, may punish him by a fine of not more than fifty dollars 1854, 328.
 8 or by imprisonment for not more than six months. G. S. 120, § 38.
 1871, 115.
 1876, 174.
 P. S. 154, § 11;
 155, § 46.
 1893, 396, § 37.
 1894, 431.

1 SECTION 28. They shall have jurisdiction, as aforesaid, of the — of lar-
 2 crime of larceny ; of fraudulently obtaining property by any game, cenes, etc.
 3 device, sleight of hand or pretended fortune telling or by any trick R. S. 126, § 23.
 4 or other means by the use of cards or other implements or instru- 1855, 135, § 2;
 5 ments ; and of buying, receiving or aiding in the concealment of 448, § 1.
 6 stolen property, if the property alleged to have been stolen or to 1857, 80; 157, § 1.
 7 have been so obtained, bought, received, or the concealment of G. S. 116, § 14.
 8 which is so aided, is not alleged to exceed the value of one hundred P. S. 154, § 19.
 9 dollars : and may punish persons found guilty of any of said crimes 1893, 396, § 38.
 10 by a fine of not more than one hundred dollars or by imprison- 1894, 431.
 11 ment for not more than two years. 13 Allen, 552.

1 SECTION 29. They shall have jurisdiction, as aforesaid, of the — of indecent
 2 crime of indecent exposure of the person ; of the violation of the exposure, etc.
 3 provisions of section one hundred and sixteen of chapter two hundred 1846, 52, § 1.
 4 and eight, if the value of the property destroyed or the amount of G. S. 161, § 85.
 5 the injury done is not alleged to exceed one hundred dollars ; of P. S. 203, § 103.
 1887, 293, §§ 1, 2.
 1893, 396, § 39.
 1894, 431.

1897, 180.
111 Mass. 427.
157 Mass. 14.
165 Mass. 594.

nuisances at common law; of the common law crime of keeping and maintaining a common, ill-governed and disorderly house; and, upon conviction of the defendant, may punish him by a fine of not more than one hundred dollars or by imprisonment for not more than one year; but if the value of the property so destroyed or injured or the amount of injury done is not alleged to exceed fifteen dollars, the fine shall not exceed fifteen dollars or the imprisonment exceed thirty days.

Jurisdiction
of violation
of milk and
dairy laws.
1885, 149.
1897, 349.

SECTION 30. They shall have jurisdiction, as aforesaid, of violations of the laws relative to inspection and sale of milk or of dairy products and imitations thereof, and may impose the same penalties as the superior court in like cases.

— of violation
of city and
town by-laws,
etc.
1801, 62.
R. S. 15, § 13.
1849, 211, § 7.
G. S. 120, § 40.

SECTION 31. They shall have jurisdiction, as aforesaid, of the violation of city and town by-laws, orders and ordinances, and of the violation of the laws and regulations relative to the public health and of complaints for defective highways.

1876, 227, § 1.

P. S. 154, §§ 11, 20; 155, § 48.

1893, 396, § 40.

1894, 431.

Recognizance
to keep the
peace, etc.
R. S. 85, § 25.
G. S. 120, § 39.
P. S. 154, § 11;
155, § 47.
1893, 396, § 41.
1894, 431.

SECTION 32. They may require persons who are found guilty of any crime within their final jurisdiction, except a crime named in the preceding section, in addition to the punishment prescribed by law, to recognize with sureties, in a reasonable sum, to keep the peace or be of good behavior, or both, for not more than one year, and to stand committed until they so recognize. The provisions of sections thirteen, sixteen and seventeen of chapter two hundred and sixteen shall apply to recognizances so taken.

Complaints,
warrants, com-
mitments, etc.
R. S. 87, § 33.
1888, 138, § 1.
G. S. 120, §§ 32,
36.
1877, 211, § 4.
P. S. 154, § 11;
155, §§ 43, 44.
1893, 396, § 42.
1894, 431.
165 Mass. 144.

SECTION 33. They may receive complaints and issue warrants and other processes for the apprehension of persons charged with crime and found within their county, or who after committing crime therein escape therefrom, returnable before a court or trial justice of the county having jurisdiction of the trial or examination of the person charged with the crime. They shall commit or bind over for trial in the superior court persons brought before them who appear to be guilty of crimes which are not within their final jurisdiction.

Final jurisdic-
tion may be
declined.
1853, 196, § 2.
1855, 448, § 2.
1857, 157, § 2.
G. S. 116, § 15.

SECTION 34. In any criminal case of which they have final jurisdiction, they may in their discretion commit or bind over the defendant for trial in the superior court, if he appears to be guilty of the crime charged.

P. S. 154, § 21.

1893, 396, § 42.

116 Mass. 349.

General
powers of jus-
tices and spe-
cial justices.
1892, 94, § 25.
1855, 312, § 5.
G. S. 116, § 16.
P. S. 154, § 22.
1893, 396, § 43.

SECTION 35. Justices and special justices of said courts may at any time receive complaints and issue warrants and search warrants, under their own hands and seals, returnable before a court or trial justice having jurisdiction of the trial or examination of the person charged with the crime.

Clerk may
receive com-
plaints, etc.
1858, 138, § 1.
G. S. 120, § 36.
1877, 211, § 1.
P. S. 153, § 6.
1893, 396, § 44.
1894, 431.

SECTION 36. The clerk of a police, district or municipal court, if his office is created by law, may receive complaints, administer to complainants the oath required thereto, and issue warrants, search warrants and summonses, returnable as required when such processes are issued by said courts.

153 Mass. 160.

1 SECTION 37. Said courts may dispense with the issuing of a
2 warrant if the person charged with a crime has been arrested with-
3 out a warrant and has been brought before the court or admitted to
4 bail: but in such case, the officer who makes the arrest shall indorse
5 upon the complaint a statement of his doings.

Warrant dis-
pensed with,
when.
1893, 396, § 45.
1894, 431.

1 SECTION 38. Warrants and other criminal processes may be
2 directed to and served by a court officer or to and by a constable or
3 police officer of any city or town in the county in which the court
4 by which they are issued has jurisdiction, or to and by any officer
5 qualified to serve criminal process in any county. Said courts,
6 justices, special justices and clerks may issue summonses or other
7 processes for witnesses in criminal cases, to run throughout the
8 commonwealth and to be served by the sheriff, his deputy, or by a
9 constable or police officer, in his own county, city or town, or in any
10 other county, city or town, in which any witness may be found.

Warrants, etc.,
how directed
and served, etc.
1838, 147, § 1.
G. S. 116, § 24.
1876, 94.
P. S. 154, §§ 28,
31.
1885, 141.
1886, 247.
1893, 396, § 46.
1894, 431.
137 Mass. 233.
164 Mass. 210.

SESSIONS AND PROCEEDINGS.

1 SECTION 39. Police, district and municipal courts shall always
2 be open and business may be transacted at any time, except as pro-
3 vided in section five of chapter one hundred and sixty-six. Sittings
4 of the courts shall be held in the court houses or other places pro-
5 vided therefor by the county, at the times and in the cities and
6 towns established by law; but if the times are not established by
7 law they shall be fixed by the courts by general rule. Sittings may
8 be adjourned from time to time as occasion requires, and cases,
9 civil or criminal, may be continued to any future day fixed for the
10 sitting of the court, and, except as provided in section fifty-five of
11 chapter one hundred, complaints in criminal cases may be placed
12 on file.

Sessions of
court.
R. S. 87, §§ 42,
43.
G. S. 116, § 20.
1864, 115.
1869, 385.
P. S. 154, § 23.
1893, 396, § 54.
1897, 431.
1898, 488.
123 Mass. 411.
138 Mass. 61.
152 Mass. 566.

1 SECTION 40. The justices and clerks of police, district and mu-
2 nicipal courts, except the municipal court of the city of Boston, may
3 procure all law books relating to the laws of the commonwealth,
4 including the reports of the supreme judicial court, the Massachu-
5 setts digests, all blank books, blanks, stationery and other inci-
6 dentals which may be required by said courts. The expenses
7 thereof shall be certified by the justices monthly, and shall be trans-
8 mitted to the county commissioners who shall audit the bills therefor
9 and order payment thereof by the county.

Books and
supplies.
G. S. 116, § 21.
1861, 172.
P. S. 154, § 24.
1888, 285.
1890, 440, § 11.
1891, 70.
1893, 396, § 1.
1897, 245.

1 SECTION 41. Police, district and municipal courts, except the
2 municipal court of the city of Boston, shall be held by the respec-
3 tive justices thereof; and, upon request of the justice, either special
4 justice may hold the court and perform the duties of the justice, or
5 hold a second or third session thereof, and two or more simultane-
6 ous sessions may be held. In case of a vacancy in the office of
7 justice, and in case of the illness, absence or other disability of
8 the justice, the special justice who holds the senior commission shall,
9 if no request has been made as aforesaid, have the powers and
10 perform the duties of the justice. When a special justice holds the
11 court or a session thereof or an inquest, or certifies a bill of costs to
12 a county, city or town treasurer, that fact, and the fact which gave

Courts, by
whom held.
R. S. 87, § 31.
1848, 331, § 3.
1849, 86, § 10;
127, § 8.
1854, 34, § 8.
1856, 4.
1857, 26, § 2;
294, § 2.
G. S. 116, § 22.
P. S. 154, § 25.
1892, 268.
1893, 396, § 55.
6 Cush. 333.
14 Gray, 14, 18,
19.
7 Allen, 349.
123 Mass. 529.
143 Mass. 187.
151 Mass. 389.

155 Mass. 134.
158 Mass. 168.

him jurisdiction, shall be entered upon the general records of the court, but need not be stated in the record of the case heard by him.

Trial before
standing and
special jus-
tices.
1894, 173, § 1.
1896, 220.

SECTION 42. If all the parties to an action in a police, district or municipal court, except in the municipal court of the city of Boston, file a written waiver of the right of appeal, they may, upon demand, have the action tried before the justice and special justices sitting together; and there shall be no right of appeal from a judgment of such justices or of a majority thereof sitting together.

Adjournment.
1884, 188.
1893, 396, § 56.

SECTION 43. If no justice or special justice is present at the time and place appointed for holding a session of a police, district or municipal court, the sheriff or any of his deputies or the clerk may adjourn the court from day to day or from time to time, giving notice thereof as circumstances may require.

Interchange
of services.
1885, 132.
1893, 396, § 63.

SECTION 44. Justices of police, district or municipal courts, except the municipal court of the city of Boston, may perform each other's duties when they find it necessary or convenient.

Rules.
G. S. 116, § 23.
P. S. 154, § 27.
1890, 359.
1893, 396, § 59.

SECTION 45. The justices, or a majority of them, of the several police, district and municipal courts, except the municipal court of the city of Boston, shall from time to time make and promulgate uniform rules regulating the time for the entry of writs, processes and appearances, the filing of answers and for holding trials in civil actions, and the practice and manner of conducting business in cases which are not expressly provided for by law, and shall submit a copy thereof to the superior court or a justice thereof, for approval, amendment or alteration.

Processes to be
under seal,
bear teste, etc.
1822, 12.
R. S. 87, § 12.
1855, 270, § 5;
428, § 7.
1857, 264, § 8.
G. S. 116, § 26.
P. S. 154, § 30.
1888, 415.
1893, 396, § 64.
13 Gray, 74.

SECTION 46. Processes issuing from such of said courts as have a clerk shall be under the seal of the court, signed by the clerk or an assistant clerk, and shall bear teste of the justice, or, in the municipal court of the city of Boston, the chief justice, unless he is a party or unless his office is vacant, and in such cases, they shall bear teste of the special justice who holds the senior commission or the senior associate justice.

14 Gray, 19.

135 Mass. 519.

145 Mass. 118.

158 Mass. 168.

Depositions.
1877, 211, § 5.
P. S. 154, § 11;
155, § 70.
1893, 396, § 65.

SECTION 47. Police, district and municipal courts shall have the same authority to issue commissions to take depositions in cases pending before them as the superior court has in cases pending therein.

Disposition of
fees, fines, etc.
R. S. 87, §§ 38,
39.
1853, 57, § 7.
1855, 26, § 4.
1856, 158, § 2.
G. S. 116, §§ 29-
31.
1877, 210, § 3.
1878, 142.
P. S. 154, §§ 34-
36, 53.
1887, 438, § 5.
1888, 180.
1890, 204; 216,
§ 2; 440, §§ 6, 8.
1891, 392.

SECTION 48. Clerks of police, district and municipal courts, except the municipal court of the city of Boston, and justices of such courts as have no clerk shall, on or before the tenth day of January, April, July and October, in each year, account for and pay over to the county treasurer all money received by them from civil business, including fees for blanks and copies, and to city and town treasurers all fines and forfeitures received by them which are payable to said cities or towns and render to said treasurers a detailed account on oath of the same. Such payments shall include the balances due and payable at the end of the quarter last preceeding

11 the day of payment. They shall, at the end of a criminal case, pay
 12 the fees and expenses of officers who are entitled thereto from the
 13 funds in their hands which are payable to the city or town liable
 14 for the payment of such fees and expenses, if they have sufficient
 15 funds therefor, and all such fees and expenses which are not so
 16 paid shall be certified at the end of each month to the treasurer
 17 of the city or town liable therefor, who shall pay them to the
 18 parties entitled thereto. They shall, at the end of a criminal case
 19 or inquest, pay the fees of witnesses for the commonwealth and
 20 the fees and expenses of officers at inquests who are entitled to
 21 such by law, from the funds furnished them by the county treasurer
 22 for that purpose, or out of any funds which may be paid into court
 23 and are payable to the county, except naturalization fees. They
 24 shall be allowed for the amounts so paid in their settlement with the
 25 county, city and town treasurers. If they do not have sufficient
 26 funds in their hands which are returnable to counties with which to
 27 pay such fees as herein provided, they may make written requisition
 28 therefor upon the county treasurer, who shall pay to them not more
 29 than one hundred dollars each in any one month: but if it appears
 30 necessary to the controller of county accounts, he may approve a
 31 requisition for not more than two hundred dollars in any one month,
 32 and, upon receipt of a requisition so approved, the county treasurer
 33 may pay to them such amount as may be called for. They shall
 34 account therefor in their regular settlements with the county treasurer
 35 and shall be liable therefor on their official bonds. A clerk or jus-
 36 tice who violates the foregoing provisions of this section shall be pun-
 37 ished by a fine of not more than one hundred dollars for each offence.

1893, 396, § 9.
 1898, 204, § 1.
 1901, 126.

MUNICIPAL COURTS.

1 SECTION 49. The provisions of this chapter which relate to
 2 police and district courts, to their justices and clerks and to the
 3 rights, duties and liabilities of parties to proceedings therein shall,
 4 so far as appropriate, apply to municipal courts, to their justices and
 5 clerks and to the parties to proceedings therein, except as herein
 6 otherwise provided.

1880, 20.

P. S. 154, § 43.

1894, 431, § 1.

Provisions
 applicable.
 1846, 279, §§ 1,
 8, 12.
 1874, 271, §§ 14,
 16.
 1875, 106, § 1.
 1876, 227, § 3;
 240, § 10.

1 SECTION 50. Upon the death, resignation, absence or disability
 2 of the justice and special justices of any of the municipal courts,
 3 except the municipal court of the city of Boston, the duties of jus-
 4 tice thereof may, at the request of the clerk, be performed for the
 5 time being by a justice or special justice of any other of said mu-
 6 nicipal courts.

Substitute
 justices.
 1882, 43.

1 SECTION 51. The municipal courts in the city of Boston shall
 2 have concurrent jurisdiction over all waters, islands and places which
 3 are not included in the district of any one of said courts or of the
 4 police court of Chelsea and which are within the jurisdiction of
 5 the superior court for the county of Suffolk, except as provided in
 6 the following section.

Concurrent
 jurisdiction.
 1874, 271, § 15.
 P. S. 154, § 44.

1 SECTION 52. The municipal court of the city of Boston, of the
 2 Charlestown district and of the South Boston district, and the East
 3 Boston district court, shall have and exercise, concurrently with

Concurrent
 criminal juris-
 diction over
 certain islands,
 &c.

1878, 53.
P. S. 154, § 45.
1886, 15, § 3.

each other, the same criminal jurisdiction as said courts have within their respective districts over all islands, except East Boston, and waters within the criminal jurisdiction of the superior court for the county of Suffolk.

Sentences to
Deer Island.
1881, 10.
P. S. 154, § 51.
1886, 15, §§ 3, 5.
1895, 224.
1896, 536, § 9.

SECTION 53. In cases in which municipal courts or the East Boston district court are authorized to sentence to imprisonment in the house of correction or county jail, or to commit thereto for non-payment of fine or expenses of prosecution, they may sentence to imprisonment in the house of correction at Deer Island or commit thereto.

Payment of
fees and ex-
penses.
1891, 392.
1898, 204, § 1.

SECTION 54. In the municipal courts in the county of Suffolk, except the municipal court of the city of Boston, and in the East Boston district court, witness fees and the fees and expenses of officers named in section forty-two of chapter two hundred and four and of all other persons shall, at the end of a criminal case or inquest in which such fees or expenses accrue, be paid by the clerks to the persons who are entitled thereto. If they do not have sufficient funds in their hands with which to make such payments they may make written requisition upon the auditor of the city of Boston, and thereupon the treasurer of said city shall advance to them not more than one hundred dollars each in any one month, for which they shall, before the tenth day of each month, account to said city and for which they shall be liable on their official bonds.

MUNICIPAL COURT OF THE CITY OF BOSTON.

Justices.
1821, 109.
R. S. 87, § 1.
G. S. 116, § 35.
1866, 279, § 4.

SECTION 55. The municipal court of the city of Boston shall consist of one chief justice, seven associate justices and two special justices. P. S. 154, § 55. 1882, 41. 1888, 419, § 11. 1894, 308. 1899, 313.

Allowance of
costs, etc.
1866, 279, § 8.
P. S. 154, § 56.

SECTION 56. The justices shall meet quarterly, and as much oftener as may be necessary, to allow bills of costs, accounts, charges and expenses which arise in said court, and shall certify to the public officer by whom they are payable such amounts as are allowed by them.

Special jus-
tices.
1870, 330, § 1.
1879, 265, § 9.
1881, 256.
P. S. 154, § 57.
1885, 42, § 1.
1896, 234.
1897, 360.
1899, 313.

SECTION 57. The special justices of said court, at the request of the justice whose duty it may be in rotation to hold a session of said court, may and, in case of the illness or absence of a justice or of a vacancy, at the request of the other justices of said court or any of them, shall hold any sessions thereof. The chief justice or, in case of his death, illness, absence or incapacity, the senior associate justice, if in his opinion the public business so requires, may also request the special justices to hold additional sessions of the court, and the clerk shall enter said request of record. During the continuance of such requests, or during the time of such illness, absence or vacancy, a special justice shall have and exercise all the powers and duties of a justice of said court. His compensation shall be fifteen dollars for each day's service; and, except when holding an additional session as above provided, the compensation for service in excess of thirty days in any one year which may be rendered to or for any one justice shall be deducted by the treasurer of the county of Suffolk from the salary of such justice.

1 SECTION 58. There shall be a clerk and five assistant clerks of
2 said court for criminal business, and a clerk and four assistant clerks
3 of said court for civil business. The assistant clerks shall be ap-
4 pointed by the clerks, respectively, subject to the approval of the
5 justices or of a majority of them, and the clerks shall be respon-
6 sible for the doings of their assistants, and may remove them at
7 pleasure.

Clerks and
assistants.
1866, 279, § 6.
1874, 271, § 20.
1879, 257, § 1;
303.
1881, 62.
P. S. 154, § 58.
1885, 42, § 2;
137, § 2.
1889, 170.
1897, 183.

1 SECTION 59. In addition to the jurisdiction otherwise conferred,
2 said court shall have original and concurrent jurisdiction with the
3 superior court of actions of contract, tort or replevin in which the
4 debt or damages demanded or the value of the property alleged to
5 be detained exceeds one hundred and does not exceed two thousand
6 dollars, if one or more of the defendants, or, in actions by the
7 trustee process, if one or more of the persons named in the writ as
8 trustees, live or have their usual place of business in the county
9 of Suffolk, and of petitions to enforce liens under the provisions of
10 chapter one hundred and ninety-seven, if the amount of the claim
11 does not exceed two thousand dollars.

Civil jurisdic-
tion.
1866, 279, § 9.
1871, 144.
1874, 271, § 6.
1875, 106, § 1.
1877, 187.
P. S. 154, § 59.
1894, 431, § 2.
123 Mass. 378.
163 Mass. 401.

*Repeal &
Subst.
1912 C. 6*

1 SECTION 60. The court shall be held for criminal business daily,
2 except on Sundays and legal holidays, at nine o'clock in the fore-
3 noon and, if it appears expedient to any of the justices, at three
4 o'clock in the afternoon, or at some hour thereafter; and it shall be
5 held weekly for civil business. Each sitting shall commence on
6 Saturday, and actions therein may be continued to a future day.
7 Simultaneous sessions may be held for the trial of civil or criminal
8 cases.

Sittings of
court.
1866, 279, § 11.
1869, 17, § 1.
P. S. 154, § 62.

1 SECTION 61. The clerks shall, on or before the tenth day of each
2 month, account for and pay over to the collector of the city of Bos-
3 ton, or to any other officer who is authorized by law to receive the
4 same, the balance due and payable at the end of the preceding month
5 of all money received by them which is payable by law to the county
6 of Suffolk, and shall render to said collector or other officer a de-
7 tailed account thereof under oath. Whoever violates the provisions
8 of this section shall be punished by a fine of not more than one hun-
9 dred dollars for each offence.

Disposition of
fees, etc.
1887, 438, § 5.
1890, 216.

CONSTABLES AND COURT OFFICERS.

1 SECTION 62. The justice of each police and district court, except
2 the East Boston district court, may designate a constable to attend
3 the sessions thereof, to preserve order and to serve such warrants,
4 mittimus, precepts, orders and processes as may be committed
5 to him by said court. Said constable shall receive such compensa-
6 tion from the county in which the court for which he is appointed
7 is established as shall be determined and allowed by the justice,
8 subject to the approval of the county commissioners; and it shall
9 be paid upon vouchers approved by the justice and by the county
10 commissioners.

Constables.
1893, 306, § 62.

1 SECTION 63. The justice of the municipal court for the Dorches-
2 ter district, for the West Roxbury district and for the Brighton
3 district, and the justice of the East Boston district court, may each

Court officers
in municipal
courts.
1879, 265, § 8.
1881, 261.

P. S. 154, § 54. appoint one officer for attendance upon the sessions of said courts, 4
 1886, 15, § 5. and the justice of the municipal court for the South Boston district, 5
 1900, 433, §§ 1, 2. for the Charlestown district and for the Roxbury district may each 6
 appoint two such officers. Each of said justices may remove an 7
 officer who has been appointed by him for any cause which he con- 8
 siderers to be sufficient, and shall fill any vacancy which is caused by 9
 removal or otherwise. Each of said officers may serve the war- 10
 rants, mittimuses, precepts, orders and processes of the court for 11
 which he is appointed. 12

Officers in
 municipal
 court of city
 of Boston.
 1873, 310, § 1.
 1874, 169.
 1879, 257, § 3.
 P. S. 154, § 63.
 1895, 457, §§ 1,
 2, 5.
 1898, 254.

SECTION 64. The justices of the municipal court of the city of 1
 Boston, or a majority of them, shall appoint officers for attendance 2
 upon the sessions of the court, not exceeding six for criminal busi- 3
 ness and three for civil business, and may at any time remove said 4
 officers for a cause which is considered by the justices to be suffi- 5
 cient, and shall fill any vacancy which is caused by removal or other- 6
 wise. Such officers may serve the warrants, mittimuses, precepts, 7
 orders and processes of said court. 8

Bond.
 1895, 457, § 4.
 1900, 433, § 1.

SECTION 65. Each officer who is appointed under the provisions 1
 of the two preceding sections shall give bond for the faithful per- 2
 formance of his duties in the sum of one thousand dollars payable 3
 to the treasurer of the county of Suffolk, with sufficient sureties, 4
 who shall be approved by the chief justice or the standing justice of 5
 the court, as the case may be. 6

Temporary
 constables or
 officers.
 1900, 179.

SECTION 66. In police, district and municipal courts which have 1
 only one constable or officer the justice may, in case of the absence 2
 of the constable or officer, appoint a constable or an officer pro tem- 3
 pore, who shall have the powers and perform the duties of the con- 4
 stable or officer, and shall receive for each day's service an amount 5
 equal to the rate by the day of the salary of the constable or officer; 6
 but the amount so paid to a constable or officer pro tempore for 7
 service in excess of fourteen days in any one calendar year shall be 8
 deducted by the county treasurer from the salary of the constable or 9
 officer. 10

SALARIES.

Salaries of
 justices and
 clerks.
 G. S. 116, § 33.
 1877, 210, § 2.
 P. S. 154, § 64.

Police courts.

Brookton.
 1874, 310, §§ 3, 6.
 1879, 248, §§ 1, 2.

Chelsea.
 1864, 256.
 1869, 359

Chicopee.
 1869, 359.
 1879, 232, § 2.

Fitchburg.
 1868, 124, § 3.
 1871, 86, § 2.

SECTION 67. The justices, clerks, assistant clerks, constables and 1
 officers of the following courts shall receive from the counties in 2
 which said courts are established annual salaries and allowances, as 3
 follows:— 4

The police court, 5
 Of Brookton, the justice, two thousand dollars; the clerk, thir- 6
 teen hundred dollars: 7

1881, 247.	1883, 57.
1885, 155, § 3.	1895, 500.
1899, 339.	1900, 419, § 1.

Of Chelsea, the justice, eighteen hundred dollars; the clerk, 8
 twelve hundred dollars: 9

1874, 201, §§ 2, 5.	1879, 265, § 6.
1882, 176, § 3.	1884, 197, § 1.
1887, 117.	1894, 470.

Of Chicopee, the justice, one thousand dollars; the clerk, five 10
 hundred dollars: 11

Of Fitchburg, the justice, eighteen hundred dollars; the clerk, 12
 twelve hundred dollars: 13

1874, 75.	1879, 233, § 2.
1882, 245.	1889, 97, 289.
1891, 71.	1899, 315.

14	Of Holyoke, the justice, eighteen hundred dollars ; the clerk,	Holyoke.
15	thirteen hundred dollars :	1871, 173.
	1881, 148, §§ 1, 3. 1884, 65. 1886, 151. 1887, 318.	1879, 232, § 2.
16	Of Lawrence, the justice, twenty-five hundred dollars ; the clerk,	Lawrence.
17	fourteen hundred dollars :	1869, 359.
	1888, 110. 1893, 479. 1900, 268.	1879, 234, § 3.
		1887, 208.
18	Of Lee, the justice, one thousand dollars ; the clerk, five hun-	Lee.
19	dred dollars :	1861, 141.
	1879, 219, § 1. 1881, 246. 1874, 171. 1894, 373. 1900, 138, § 2.	
20	Of Lowell, the justice, twenty-seven hundred dollars ; the clerk,	Lowell.
21	two thousand dollars ; the assistant clerk, twelve hundred dol-	1872, 159.
22	lars :	1879, 247, § 1.
	1886, 307. 1889, 152, § 2. 1893, 479. 1899, 234.	1882, 63.
23	Of Lynn, the justice, twenty-five hundred dollars ; the clerk,	Lynn.
24	fifteen hundred dollars :	1866, 298, § 9.
	1872, 141. 1881, 290. 1891, 162. 1900, 265.	1869, 359.
	1879, 234, § 2. 1886, 154. 1893, 479. 1901, 418.	
25	Of Marlborough, the justice, fifteen hundred dollars ; the clerk,	Marlborough.
26	eight hundred dollars :	1882, 233, § 6.
	1892, 93.	1889, 19.
27	Of Newburyport, the justice, twelve hundred dollars ; the clerk,	Newburyport.
28	one thousand dollars :	1869, 359.
	1879, 234, § 4. 1882, 245, § 1. 1889, 277. 1901, 415.	1877, 148.
29	Of Newton, the justice, eighteen hundred dollars ; the clerk, nine	Newton.
30	hundred dollars :	1876, 195, § 4.
	1886, 158. 1890, 93. 1893, 479. 1898, 362.	1879, 247, § 4.
31	Of Somerville, the justice, two thousand dollars ; the clerk, one	Somerville.
32	thousand dollars :	1872, 233, § 4.
	1882, 245. 1887, 180, 265. 1891, 161. 1897, 318.	1874, 235.
33	Of Springfield, the justice, twenty-five hundred dollars ; the clerk,	Springfield.
34	fourteen hundred dollars ; the assistant clerk, six hundred dol-	1868, 330.
35	lars :	1872, 163, § 3.
	1874, 180, § 4. 1879, 232, § 1. 1886, 155. 1887, 171.	
	1889, 28. 1897, 359. 1898, 372. 1899, 204.	
36	Of Williamstown, the justice, eight hundred and fifty dollars.	Williamstown.
	1897, 325. 1900, 229.	1879, 219, § 1.
37	The district court.	District courts.
38	First of Barnstable, the justice, one thousand dollars :	1890, 177, § 3. First Barn-
39	Second of Barnstable, the justice, one thousand dollars :	1890, 177, § 3. stable.
40	Of central Berkshire, the justice, two thousand dollars ; the clerk,	Second Barn-
41	one thousand dollars :	stable.
	1882, 245. 1887, 130. 1893, 479. 1899, 314.	Central Berk-
		shire.
		1869, 359 ; 416, § 6.
42	Of northern Berkshire, the justice, eighteen hundred dollars ; the	Northern Berk-
43	clerk, one thousand dollars :	shire.
	1887, 61. 1888, 89. 1871, 326. 1879, 219.	1870, 201, § 6.
		1898, 216. 1899, 217.
44	Of southern Berkshire, the justice, twelve hundred dollars ; the	Southern Berk-
45	clerk, seven hundred dollars :	shire.
	1871, 319, § 1. 1879, 219. 1886, 333, § 2. 1894, 374.	1870, 202, § 2.
	1874, 126. 1884, 231. 1887, 227. 1897, 322.	
46	Fourth of Berkshire, the justice, fourteen hundred dollars ; the	Fourth Berk-
47	clerk, six hundred dollars :	shire.
	1895, 176. 1898, 460.	
48	First of Bristol, the justice, eighteen hundred dollars ; the special	First Bristol.
49	justice who holds court at Attleborough, at the rate of eight hundred	1874, 293, § 20.
50	dollars, as provided in chapter one hundred and eighty-nine of the	1875, 189, § 1.
51	acts of the year eighteen hundred and seventy-seven ; the clerk,	1879, 201, § 1.
52	thirteen hundred dollars :	1881, 248.
	1884, 220. 1889, 261. 1901, 362.	
53	Second of Bristol, the justice, three thousand dollars ; the clerk,	Second Bristol.
54	eighteen hundred dollars :	1862, 92.
	1872, 77. 1876, 198, § 1. 1879, 201, § 3.	1869, 359, § 2.
	1874, 293, § 20. 1877, 188. 1891, 108.	

Third Bristol. 1874, 293, § 20. 1879, 201, § 2.	Third of Bristol, the justice, twenty-five hundred dollars; the clerk, thirteen hundred dollars :	1889, 41, 54.	1893, 479.	1898, 429.	1900, 384.	55
Dukes County.	Of Dukes County, the justice, five hundred dollars :				1898, 287, § 2.	57
First Essex. 1874, 224, §§ 5, 7. 1879, 234, § 1.	First of Essex, the justice, eighteen hundred dollars; the clerk, thirteen hundred dollars :		1882, 245, § 1.			59
Second Essex.	Second of Essex, the justice, twelve hundred dollars :			1888, 193, § 4.		60
Central northern Essex.	Central of northern Essex, the justice, eighteen hundred dollars; the clerk, one thousand dollars :					61
		1867, 316, § 6. 1871, 314.	1874, 207. 1879, 234, § 2.	1882, 245, § 1. 1888, 55.		62
Eastern Essex. 1864, 127. 1869, 359.	Of eastern Essex, the justice, eighteen hundred dollars; the clerk, one thousand dollars :		1877, 212, § 3.	1879, 234, § 2.		63
		1883, 53.	1888, 234, 235.	1897, 324.	1900, 400, § 6.	64
Franklin. 1896, 353, § 2.	Of Franklin, the justice, fifteen hundred dollars; the clerk, seven hundred dollars :					65
Eastern Franklin. 1899, 391, § 2.	Of eastern Franklin, the justice, five hundred dollars; the clerk, two hundred dollars :					67
Eastern Hampden. 1872, 277, § 5.	Of eastern Hampden, the justice, twelve hundred dollars; the clerk, five hundred dollars :		1879, 232, § 2.	1889, 130.	1896, 337.	69
Western Hampden. 1886, 190, § 2.	Of western Hampden, the justice, twelve hundred dollars; the clerk, six hundred dollars :		1888, 88.	1893, 479.		71
Hampshire. 1882, 227, § 2. 1883, 75, 80.	Of Hampshire, the justice, twenty-three hundred dollars; the clerk, thirteen hundred dollars :		1886, 106.	1893, 479.		73
Central Middlesex.	Of central Middlesex, the justice, eight hundred dollars :					75
		1874, 315, § 5.	1879, 247, § 3.	1890, 238.		
Northern Middlesex. 1872, 269, § 5.	First of northern Middlesex, the justice, one thousand dollars; the clerk, six hundred dollars :					76
		1874, 281, §§ 1, 2.	1879, 247, §§ 2, 3.	1888, 214.	1889, 198.	77
First eastern Middlesex. 1874, 292, § 6. 1879, 247, § 2. 1882, 87, 245.	First of eastern Middlesex, the justice, twenty-five hundred dollars; the clerk, sixteen hundred dollars; the assistant clerk, one thousand dollars :					78
		1886, 166, 167. 1897, 422.	1893, 479. 1900, 332.	1894, 65, § 2. 1901, 457.		79
Second eastern Middlesex.	Second of eastern Middlesex, the justice, eighteen hundred dollars; the clerk, one thousand dollars :					81
		1881, 128, § 4. 1883, 97.	1885, 180. 1886, 123.	1888, 233. 1891, 107.	1894, 336. 1897, 390.	82
Third eastern Middlesex. 1896, 218, § 9. 1899, 359. 1879, 247, § 1.	Third of eastern Middlesex, the justice, twenty-seven hundred dollars; the clerk, sixteen hundred dollars; the assistant clerk, one thousand dollars :					83
		1882, 233, § 6. 1897, 260, § 2.	1886, 165. 1898, 358.	1893, 370. 1899, 297.		84
Fourth eastern Middlesex. 1882, 233, § 6.	Fourth of eastern Middlesex, the justice, eighteen hundred dollars; the clerk, one thousand dollars :		1887, 174.	1893, 479.	1897, 358.	85
Southern Middlesex. 1874, 35, §§ 2, 4.	First of southern Middlesex, the justice, fifteen hundred dollars; the clerk, eight hundred dollars :		1879, 247, § 2.	1886, 156.	1889, 12.	87
Northern Norfolk. 1898, 478, § 2.	Of northern Norfolk, the justice, fifteen hundred dollars; the clerk, eight hundred dollars :					89
East Norfolk. 1872, 289, §§ 2, 4. 1873, 18.	Of East Norfolk, the justice, fifteen hundred dollars; the clerk, one thousand dollars :		1874, 364.			90
		1879, 220.	1888, 54.	1889, 263.	1893, 479.	91
Southern Norfolk. 1891, 273, § 2.	Of southern Norfolk, the justice, one thousand dollars; the clerk, five hundred dollars :					92
Western Norfolk. 1898, 497, § 3.	Of western Norfolk, the justice, one thousand dollars; the clerk, five hundred dollars :					93
Second Plymouth. 1874, 350, § 18.	Second of Plymouth, the justice, twelve hundred and fifty dollars; the clerk, six hundred and fifty dollars :				1879, 248, §§ 1, 2.	94
					1880, 226.	95

100	Third of Plymouth, the justice, eight hundred dollars; the clerk,	Third Plymouth.
101	five hundred dollars:	1879, 248, §§ 1, 2. 1889, 137. 1894, 321. 1874, 350, § 18.
102	Fourth of Plymouth, the justice, one thousand dollars; the clerk,	Fourth Plymouth.
103	five hundred dollars and his travelling expenses which are necessarily	1874, 350, § 18.
104	incurred in the performance of his official duties, not exceeding one	1879, 248, §§ 1, 2.
105	hundred dollars a year:	1884, 204. 1889, 281.
106	Of East Boston, the justice, twenty-two hundred dollars; the	East Boston.
107	clerk, fourteen hundred dollars; the officer, eleven hundred	1874, 271, § 17.
108	dollars:	1879, 265, § 5. 1881, 250, 261.
109	Central of Worcester, the justice, three thousand dollars; the	Central Worcester.
110	clerk, twenty-two hundred and fifty dollars; the assistant clerk,	1872, 190, §§ 5, 7.
111	twelve hundred dollars:	1882, 245, § 1. 1888, 50. 1889, 83. 1893, 479. 1874, 154. 1879, 233, § 1.
112	First of northern Worcester, the justice, fourteen hundred dol-	Northern Worcester.
113	lars; the clerk, eight hundred dollars: for the travelling expenses	1884, 215, § 4.
114	which are necessarily incurred and paid by the justice and the clerk	1885, 286.
115	in the performance of their official duties, one hundred and fifty	1893, 479.
116	dollars each:	1898, 256.
117	First of eastern Worcester, the justice, one thousand dollars:	First eastern Worcester.
	1872, 200, § 5. 1879, 233, § 2. 1881, 245. 1884, 208.	
118	Second of eastern Worcester, the justice, twelve hundred dollars:	Second eastern Worcester.
119	the clerk, six hundred dollars. Until the first day of January in	1874, 337, § 6.
120	the year nineteen hundred and three, in addition to his salary the	1879, 233, §§ 2, 3.
121	justice shall receive annually three hundred dollars and the clerk,	1882, 245, § 1.
122	four hundred dollars:	1889, 158, 218. 1898, 382, 388.
123	First of southern Worcester, the justice, fifteen hundred dollars;	First southern Worcester.
124	the clerk, eight hundred dollars:	1871, 341, § 5. 1879, 233, § 2.
	1881, 245. 1890, 131. 1898, 369. 1899, 154.	
125	Second of southern Worcester, the justice, fourteen hundred	Second southern Worcester.
126	dollars:	1874, 85, § 2. 1879, 233, § 2. 1872, 201, § 5. 1881, 245. 1888, 173.
127	Third of southern Worcester, the justice, sixteen hundred dollars:	Third southern Worcester.
128	the clerk, five hundred dollars.	1872, 152, § 5.
	1879, 233, § 2. 1882, 245, § 1. 1900, 326.	
129	The municipal court,	Municipal courts.
130	Of the city of Boston, the chief justice, forty-three hundred	Boston.
131	dollars; the associate justices, four thousand dollars each; the	1896, 279, § 6.
132	clerks, three thousand dollars each; the first, second, third and	1897, 355, § 6; 356.
133	fourth assistant clerks of the court for civil business, twenty-five	1872, 43.
134	hundred dollars, two thousand dollars, fifteen hundred dollars and	1874, 271, § 20.
135	fifteen hundred dollars, respectively: the first, second, third, fourth	1879, 257, 265.
136	and fifth assistant clerks of the court for criminal business, twenty-	1881, 62.
137	five hundred dollars, eighteen hundred dollars, sixteen hundred	1882, 41, § 2; 245, § 1.
138	dollars, fourteen hundred dollars and fourteen hundred dollars, re-	1885, 42, § 2; 137, §§ 1, 2.
139	spectively; the three officers in the civil sessions, twelve hundred	1886, 150.
140	dollars each; and the six officers in the criminal sessions, fifteen	1887, 163.
141	hundred dollars each:	1888, 195, 419.
142	Of the Charlestown district, the justice, twenty-two hundred	1889, 39, 143, 170.
143	dollars; the clerk, fifteen hundred dollars; the officers, one thou-	1892, 58.
144	sand dollars each:	1893, 479.
	1886, 136. 1887, 175. 1889, 227. 1891, 160. 1901, 372.	1895, 457, § 3.
145	Of the South Boston district, the justice, twenty-five hundred	Charlestown.
146	dollars; the clerk, fourteen hundred dollars; the assistant clerk,	1869, 359.
147	eight hundred dollars; the officers, eleven hundred dollars each:	1872, 108.
	1879, 265, § 4. 1881, 261. 1882, 245, § 1. 1887, 327. 1889, 242. 1894, 379.	1874, 271, §§ 17, 19. 1875, 182.

Roxbury.
1879, 265, § 3.
1881, 249, 261.
1882, 245, § 1.
1889, 174, 217,
239.

Of the Roxbury district, the justice, three thousand dollars; the clerk, eighteen hundred dollars; the assistant clerk, twelve hundred dollars; the officers, twelve hundred dollars each :

1893, 479. 1897, 356. 1900, 330, 331.

Brighton.
1874, 271, §§ 17,
19.
1879, 265, § 5.

Of the Brighton district, the justice, sixteen hundred dollars; the clerk, nine hundred dollars; the officer, one thousand dollars :

1881, 261. 1885, 49. 1886, 148. 1894, 363.

West Roxbury.
1874, 271, §§ 17,
19.
1879, 265, § 5.
1881, 261.

Of the West Roxbury district, the justice, sixteen hundred dollars; the clerk, one thousand dollars; the officer, one thousand dollars :

1883, 111. 1886, 148. 1887, 274, § 2. 1889, 92. 1893, 479. 1895, 155

Dorchester.
1879, 333, § 3.
1879, 333, § 3.
1874, 338.
1879, 265, § 5.

Of the Dorchester district, the justice, sixteen hundred dollars; the clerk, one thousand dollars; the officer eight hundred dollars :

1881, 261. 1885, 79. 1886, 124. 1893, 479.

Brookline.
1882, 233, § 6.
1884, 211.

Of Brookline, the justice, one thousand dollars; the clerk, five hundred dollars :

1888, 60. 1898, 214. 1899, 159

Justices, clerks and officers whose yearly salaries are stated in this section, shall be paid at the same rate for any part of a year.

Clerical
assistance.
1888, 184, 246.
1889, 62.
1895, 260.
1897, 263.
1898, 286, 331.
1900, 419, § 2.
1901, 295, 336.

Clerks of the following police and district courts shall be allowed for extra clerical assistance, upon the certificate of the justice and the clerk that the work was actually performed and was necessary, with the time occupied in its performance and the names of the persons by whom it was performed, and subject to the approval in writing of the county commissioners, the following amounts, payable monthly to the persons who are so employed :

—in police
courts.

The police court, 169

Of Brockton, not more than two hundred dollars ; 170

Of Lawrence, Lowell and Lynn, not more than five hundred dollars each ; 171

—in district
courts.

The district court, 173

Second of Bristol, not more than five hundred dollars ; 174

Third of Bristol, not more than five hundred dollars ; 175

Central of northern Essex, not more than four hundred dollars ; 176

Central of Worcester, not more than twelve hundred dollars. 177

—in municipal
court of the
city of Boston.
1879, 257, §§ 1, 2.
P. S. 154, § 58.
1883, 47.
1888, 419, § 13.
1893, 371.
1895, 125.
1899, 353.

The clerk of the municipal court of the city of Boston for criminal business, an amount not exceeding nineteen hundred dollars a year, and the clerk of said court for civil business, an amount not exceeding fifty-two hundred dollars a year, which shall be expended by them, respectively, for extra clerical assistance; but no more than forty-two hundred dollars a year shall be paid to the clerk of the court for civil business without the approval of the justices of said court or of a majority of them.

—in municipal
courts.
1889, 206.
1897, 397, § 1.

The clerk of the municipal court for the Dorchester district, not more than two hundred dollars annually for clerical assistance; and the clerk of the municipal court for the Charlestown district, if it is considered necessary by the justice, not more than five hundred dollars in any one year for clerical assistance actually performed, which shall be paid to the person who actually performs the work upon his certificate stating the amount of work done, to which certificate the approval of the justice shall be affixed.

Travelling
expenses.
1884, 205.
1895, 333, § 2.
1899, 110.

SECTION 68. The special justice of the first district court of Bristol who holds the session of said court at Attleborough shall be allowed fifty dollars a year by the county for travelling expenses which may be incurred by him in the transaction of the business

5 of the court. The special justices of the district court of Hamp-
6 shire shall each be allowed not more than one hundred dollars by
7 the county for their travelling expenses which may be necessarily
8 incurred when holding sessions of said court out of the places
9 where they respectively reside, which shall be audited by the county
10 commissioners. The justice, special justices and clerk of the district
11 court of Franklin shall each be allowed by the county their travel-
12 ling expenses which may be necessarily incurred when holding
13 sessions of said court out of the towns where they severally reside,
14 which shall be audited by the county commissioners.

1 SECTION 69. Unless otherwise provided, special justices of police, Compensation of
2 district and municipal courts, except the municipal court of the city justices.
3 of Boston, shall be paid compensation by the county for each day's R. S. 87, § 46.
4 service at the same rate as the rate by the day of the salary of the 1877, 210, §§ 2, 7.
5 justice of the same court; but compensation so paid for service in 1879, 267.
6 excess of thirty days in any one calendar year, except for services 1881, 266.
7 in holding a simultaneous session or a session under the provisions P. S. 154, § 26.
8 of section forty-two, shall be deducted by the county treasurer from 1893, 396, § 66.
9 the salary of the justice. 1894, 173, § 2;
431, § 1.

1 SECTION 70. Clerks pro tempore of police, district and municipal — of clerks pro
2 courts shall receive from the county as compensation for each day's tempore.
3 service an amount equal to the rate by the day of the salary of the G. S. 116, § 7.
4 clerk; but compensation so paid to a clerk pro tempore for service, P. S. 154, § 8.
5 in excess of thirty days in any one calendar year, shall be deducted 1888, 352, § 1.
6 by the county treasurer from the salary of the clerk. 1893, 396, § 67.
1895, 245.

1 SECTION 71. In computing the rate by the day of the compen- Computation
2 sation of justices and clerks of said courts, Sundays and legal hol- of compensa-
3 idays shall not be included in the days in which the courts are open tion. 1894, 142.
4 for business.

CHAPTER 161.

OF JUSTICES OF THE PEACE AND TRIAL JUSTICES.

- SECTIONS 1-5. — Justices of the Peace.
SECTIONS 6-10. — Trial Justices.
SECTIONS 11-27. — Jurisdiction and Proceedings in Civil Matters.
SECTIONS 28-47. — Jurisdiction and Proceedings in Criminal Matters.
SECTIONS 48-63. — General Provisions.

JUSTICES OF THE PEACE.

1 SECTION 1. Justices of the peace shall be appointed, and their Justices of the
2 commissions shall be issued, for the commonwealth, and they shall peace, appoint-
3 have jurisdiction throughout the commonwealth except as provided ment, etc.
4 in sections three and four. 1863, 157, § 1.
1870, 120.
1880, 132.
P. S. 155, § 5.

1 SECTION 2. Justices of the peace and special commissioners may — may ad-
2 administer oaths or affirmations in all cases in which an oath is re- minister oaths,
3 quired, unless otherwise expressly provided. etc.
R. S. 85, § 36.
G. S. 120, § 49.
P. S. 155, § 2. 1899, 178, § 3. 145 Mass. 225.

Justices designated to issue warrants and take bail.
1879, 254.
P. S. 155, § 4.
1884, 286.
1897, 461.
136 Mass. 155.
155 Mass. 5.
[1 Op. A. G. 318.]

SECTION 3. The governor, with the advice and consent of the council, may from time to time, upon the petition of the mayor and aldermen of a city or the selectmen of a town which is included within the judicial district of a police or district court, and in which neither a justice nor the clerk of such court resides, designate and commission a justice of the peace who resides in said city or town to issue warrants returnable to said court and to take bail in criminal cases arising within such judicial district.

Same subject.
1898, 381.

SECTION 4. The governor, with the advice and consent of the council, may from time to time designate and commission a justice of the peace who resides in the city of Quincy to issue warrants returnable to the district court of East Norfolk and to take bail in criminal cases arising within the judicial district of said court.

Limitation of powers of justices of the peace.
1858, 138, § 1.
1859, 193.
G. S. 120, § 36.
1877, 211, § 1.
P. S. 155, § 6.
126 Mass. 235.

SECTION 5. A justice of the peace who is not designated and commissioned as a trial justice shall not have or exercise power, authority or jurisdiction to try cases, civil or criminal, receive complaints or issue warrants, except as provided in sections three and four; but a justice of the peace who is also a clerk or assistant clerk of a police, district or municipal court may receive complaints and issue warrants, returnable before the police, district or municipal court or trial justice which has jurisdiction of the trial or examination of the person charged with the offence.

TRIAL JUSTICES.

Trial justices.
1858, 138, § 1.
1859, 193.
1860, 187, § 1.
G. S. 120, § 33.
P. S. 155, § 7.
134 Mass. 226.

SECTION 6. The governor, with the advice and consent of the council, shall, from time to time, designate and commission in the several counties a suitable number of justices of the peace as trial justices, and may at any time revoke such designation.

Term of office.
1860, 187, § 2.
1877, 211, § 7.
P. S. 155, § 9.
134 Mass. 226.

SECTION 7. A trial justice shall hold his office for the term of three years from the time of his designation, unless during that period he ceases to hold a commission as justice of the peace or unless such designation and commission as trial justice is revoked.

Bond.
1874, 394, § 3.
P. S. 155, § 76.

SECTION 8. A trial justice, before entering upon the duties of his office, shall give bond for one thousand dollars payable to the treasurer of the county, with sufficient sureties who shall be approved by the superior court or by a justice thereof, conditioned to account for and pay over all fines, costs, forfeitures, fees and money which he shall receive in the exercise of his office. A failure so to account or pay over shall be a breach of his bond. A failure to give such bond shall be a sufficient cause for the revocation of his commission.

Number.
1858, 138, § 2.
G. S. 120, § 34.
1860, 254.
P. S. 155, § 10.
1892, 408.

SECTION 9. Such trial justices shall be distributed as the convenience of the several counties requires, and the number in commission shall not exceed nine in Barnstable, twelve in Berkshire, thirteen in Bristol, three in Dukes County, nineteen in Essex, ten in Franklin, ten in Hampden, ten in Hampshire, thirty in Middlesex, two in Nantucket, seventeen in Norfolk, fifteen in Plymouth, one in Suffolk, twenty-six in Worcester.

1 SECTION 10. If a trial justice changes his domicile to a place
 2 within the district and jurisdiction of a police, district or municipal
 3 court, his authority to try civil or criminal cases, receive complaints
 4 and issue warrants shall cease, and another trial justice may be
 5 designated and appointed in his place.

Authority to
 cease upon
 change of
 domicile, etc.
 1858, 138, § 2.
 G. S. 120, § 35.
 1877, 211, § 2.
 P. S. 155, § 11.
 120 Mass. 242.

JURISDICTION AND PROCEEDINGS IN CIVIL MATTERS.

1 SECTION 11. Trial justices may hold courts within the counties
 2 for which they are appointed, and shall, subject to the provisions
 3 of section twenty of chapter one hundred and sixty, have original
 4 jurisdiction, exclusive of the superior court, of actions of contract,
 5 tort or replevin in which the debt or damages demanded or value of
 6 the property alleged to be detained does not exceed one hundred
 7 dollars; of actions of replevin for beasts distrained or impounded
 8 in order to recover a penalty or forfeiture supposed to have been
 9 incurred by their going at large, or to obtain satisfaction for damages
 10 alleged to have been done by them; and of summary process under
 11 the provisions of chapter one hundred and eighty-one.

Exclusive
 original jurie
 diction.
 1697, 8, § 1.
 1779-80, 28, § 1.
 1783, 42, § 1.
 1789, 26, § 1.
 1797, 21.
 1807, 123, § 1.
 1825, 89, § 1.
 R. S. 85, § 1;
 104, § 4; 113,
 § 17.
 G. S. 120, § 1.
 1877, 211, § 3.
 P. S. 155, § 12.
 133 Mass. 430.
 135 Mass. 290.
 168 Mass. 234.

1 SECTION 12. They shall, subject to the provisions of section
 2 twenty of chapter one hundred and sixty, have original and concur-
 3 rent jurisdiction with the superior court of actions of contract, tort
 4 or replevin in which the debt or damages demanded or value of
 5 property alleged to be detained is more than one hundred and does
 6 not exceed three hundred dollars.

Original and
 concurrent
 jurisdiction.
 R. S. 85, § 2.
 1852, 314, § 1.
 G. S. 120, § 2.
 1877, 211, § 3.
 P. S. 155, § 13.
 8 Allen, 337.

1 SECTION 13. They may issue writs of scire facias against execu-
 2 tors and administrators upon a suggestion of waste after judgment
 3 against them, and also against the bail taken in a civil action before
 4 themselves, and proceed therein to judgment and execution as the
 5 superior court might do in like cases.

P. S. 155, § 14.

Scire facias
 against exec-
 utors, etc.
 1753-4, 18, § 3.
 1783, 32, § 9;
 42, § 4.
 1803, 132, § 1.
 R. S. 85, § 16.
 G. S. 120, § 3.

1 SECTION 14. Such writs shall be served not less than seven days
 2 before the return day, which shall be not less than sixty days after
 3 the date thereof, and they may run into any county in which the
 4 defendant may be found.

Service.
 1803, 132, § 1.
 R. S. 85, § 17.
 G. S. 120, § 4.
 P. S. 155, § 15.

1 SECTION 15. They shall have jurisdiction of actions upon such
 2 writs although the debt and costs on the original judgment to-
 3 gether exceed three hundred dollars; but judgment and execution
 4 may be awarded by the trial justice for the whole amount due to
 5 the plaintiff, with the costs of the new action.

Limit of juris-
 diction in such
 case.
 1803, 132, § 1.
 R. S. 85, § 18.
 G. S. 120, § 5.
 P. S. 155, § 16.

1 SECTION 16. Actions before trial justices may be heard and
 2 determined at their dwelling houses or at any other convenient and
 3 suitable place; and writs and processes may be made returnable
 4 accordingly, but not earlier than nine o'clock in the forenoon nor
 5 later than five o'clock in the afternoon.

147 Mass. 70.

Where causes
 may be heard.
 1828, 64.
 R. S. 85, § 31.
 1856, 96.
 G. S. 120, § 9.
 P. S. 155, § 20.
 4 Cush. 455.

1 SECTION 17. The reasonable and necessary expenses, not ex-
 2 ceeding ten dollars a month, actually incurred by a trial justice for
 3 the rent of an office which is used by him for court purposes, shall
 4 be paid by the county in which the office is located, in the same
 5 manner as the expenses for rent of police and district courts.

Office rent.
 1898, 555.
 1901, 246.
 166 Mass. 303.

Failure of justice to attend, in civil process. 1848, 133.
G. S. 120, § 10. 1878, 49.
1880, 132.
P. S. 155, § 21.

SECTION 18. If a trial justice fails to attend at the time and place to which a civil process is returnable or continued before him, any other trial justice for the same county or a justice of the peace may attend and continue the process for not more than thirty days, without costs, and saving the rights of all parties; and he shall make a certificate thereof, which shall be filed with the papers in the case and entered upon the record by the justice before whom the process was returnable.

Removal of cases concerning land. 1698, 7, § 4.
1783, 42, § 2.
1825, 89, § 3.
R. S. 85, § 3;
104, § 9.
G. S. 120, § 13.
1863, 125, § 2.
P. S. 155, § 24.
1885, 384, § 5.
19 Pick. 419.
8 Met. 166.
10 Met. 248.
115 Mass. 558.

SECTION 19. If, in an action pending before a trial justice, it appears by the pleadings or otherwise that the title to land is drawn in question, the fact, unless it appears by the pleadings, shall be stated on the record, and the case shall, at the request of either party, be removed to and entered in the superior court for the same county at the return day next after the removal is requested, and shall be there tried and determined as if it had been originally commenced, or, if it is a writ of scire facias, as if the original judgment had been obtained, in that court. 123 Mass. 85. 128 Mass. 192. 151 Mass. 543.

Plaintiff removing to recognize. 1698, 7, § 4.
1783, 42, § 2.
R. S. 85, § 4.
G. S. 120, § 14.
P. S. 155, § 25.
1885, 384, § 5.

SECTION 20. The party who requires the case to be so removed shall, except as provided in section one hundred and one of chapter one hundred and seventy-three, recognize to the other party in a reasonable sum with sufficient surety or sureties, with condition to enter the action at the superior court for the same county at the return day next after the removal is requested; and if he fails so to recognize, the trial justice shall hear and determine the case as if no removal had been requested.

Proceedings on removal. 1698, 7, § 4.
1783, 42, § 2.
R. S. 85, § 5.
G. S. 120, § 15.
P. S. 155, § 26.

SECTION 21. The recognizor shall produce at the superior court a copy of the record and all papers required to be produced by an appellant, and if he fails so to do, or so to enter the action, he shall, upon complaint of the adverse party, be there defaulted or nonsuited, as the case may be, and such judgment shall be thereupon rendered as law and justice may require.

Death of justice before entry. 1862, 141, § 1.
P. S. 155, § 37.

SECTION 22. If a trial justice before whom a civil action has been commenced dies after the service of the writ either by attachment of property or by personal service on the defendant and before the entry thereof, the plaintiff may enter the action before any other trial justice for the same county, who may proceed in the case as if the writ had been originally issued with his signature, except as provided in section twenty-four.

— after entry and before judgment. 1862, 141, § 2.
P. S. 155, § 38.

SECTION 23. If a trial justice before whom a civil action has been entered and is pending dies before the final judgment in the case has been rendered by him, any other trial justice for the same county may, upon the application of any one of the parties to the action, cause the papers in the case to be brought and entered before him, and he may thereupon proceed in the action in the same manner as if it had been originally entered before him, except as provided in the following section.

Notice to the parties, etc. 1862, 141, § 3.
P. S. 155, § 39.

SECTION 24. If an action is entered as provided in section twenty-two or if the papers in a case are brought and entered as

3 provided in the preceding section, the trial justice before whom the
 4 case is so entered shall issue notice to the other party or parties to
 5 the action, that they may appear before him. Such notice shall be
 6 served in the manner provided for the service of writs returnable
 7 before trial justices, and no further proceedings shall be had in the
 8 case until such notice has been given.

1 SECTION 25. If a trial justice dies while a judgment rendered
 2 by him remains unsatisfied, any other trial justice for the same
 3 county may, upon the application of the creditor, cause the record
 4 of the judgment to be brought before him, and shall thereupon tran-
 5 scribe the same upon his own book of records, note on the original
 6 that he has so transcribed it and deliver it to the person who pro-
 7 duced it.

Death of
 justice while
 judgment
 unsatisfied.
 1753-4, 17, § 1.
 1783, 42, § 3.
 R. S. 85, § 19.
 G. S. 120, § 29.
 P. S. 155, § 40.

1 SECTION 26. The trial justice who is applied to under the pro-
 2 visions of section twenty-three or twenty-five shall, unless the pro-
 3 visions of section sixty-one have been complied with, if necessary
 4 issue a summons to the executor or administrator of the deceased
 5 justice, or to any other person who is supposed to have the custody
 6 of the papers or records, requiring him to produce the same or to
 7 submit to an examination on oath as to the place where they may
 8 be found; and may commit such person as for contempt until he
 9 submits to such examination, if required, and produces the papers
 10 and records, if they are within his custody or control.

Production of
 papers of de-
 ceased justice.
 1753-4, 17, § 1.
 1783, 42, § 3.
 R. S. 85, § 20.
 G. S. 120, § 30.
 1862, 141, § 4.
 P. S. 155, § 41.

1 SECTION 27. After the record of a judgment has been duly tran-
 2 scribed by a trial justice, he may issue execution on the judgment
 3 as if it had been rendered by himself, changing the form as the cir-
 4 cumstances require; and a copy of the record, certified by him, shall
 5 have the same effect as an authenticated copy of the original.

Execution,
 how issued.
 1753-4, 17, § 1.
 1783, 42, § 3.
 R. S. 85, § 21.
 G. S. 120, § 31.
 P. S. 155, § 42.

JURISDICTION AND PROCEEDINGS IN CRIMINAL MATTERS.

1 SECTION 28. Trial justices may, within the counties for which
 2 they are appointed, receive complaints and issue warrants against
 3 persons charged with crime unless the crime was committed within
 4 the judicial district of a police, district or municipal court.

1877, 211.

P. S. 155, § 43.

126 Mass. 235.

Trial justices
 may issue
 warrants.
 1858, 138, § 1.
 1859, 193.
 G. S. 120, §§ 32,
 36.

1 SECTION 29. Warrants and other criminal processes which are
 2 issued by a trial justice may be directed to and served by a con-
 3 stable of any city or town in the county in which such trial justice
 4 has jurisdiction, and such warrants shall be made returnable before
 5 a trial justice or a police, district or municipal court which has juris-
 6 diction of the trial or examination of the person charged with the
 7 crime.

Warrants, etc.,
 how directed
 and served, etc.
 1876, 94.
 1877, 211, § 4.
 P. S. 155, § 44.
 137 Mass. 233.
 164 Mass. 209.

1 SECTION 30. Trial justices shall have jurisdiction, concurrent
 2 with the superior court, of all crimes which may be subject to the
 3 penalties of a fine or forfeiture of not more than fifty dollars or of
 4 imprisonment for not more than six months, or to both of said
 5 penalties.

Criminal juris-
 diction, gen-
 eral.
 1858, 45, § 2.
 G. S. 120, § 37.
 P. S. 155, § 45.
 14 Gray, 35.
 108 Mass. 483.

Criminal
jurisdiction
of breaches
of the peace.
1892-3, 18, § 6;
28, § 7.
1783, 51.
1794, 26.
R. S. 85, § 24.
1854, 328.
G. S. 120, § 38.
1871, 115.
1876, 174.
P. S. 155, § 46.
11 Cush. 262.

SECTION 31. They shall have jurisdiction, as aforesaid, of the crimes of assault and battery and of other breaches of the peace which are not of a high and aggravated nature; of disturbing the peace to the great damage and common nuisance of the inhabitants of the place in which the disturbance occurs; of affrays and riots; of going armed offensively to the terror of the people; of uttering menaces or threatening speeches; and of being a dangerous and disorderly person; and, upon conviction of the defendant, may punish him by a fine of not more than thirty dollars or by imprisonment for not more than ninety days.

— to bind over
to superior
court.
R. S. 85, § 25.
G. S. 120, § 39.
P. S. 155, § 47.

SECTION 32. Whoever is arrested for any of the crimes named in the preceding section shall be examined by the trial justice before whom he is brought, and may be tried before him, and, if convicted, may be required to find sureties to keep the peace and be punished by fine or imprisonment as before provided; or, if the offence is of a high and aggravated nature, he may be committed or bound over for trial before the superior court.

— of violations
of by-laws, etc.
1892-3, 28, § 5.
1801, 62.
R. S. 15, § 13.
1849, 211, § 7.
1852, 299.
1857, 194, § 5.
G. S. 120, § 40.
P. S. 155, § 48.

SECTION 33. Trial justices shall have jurisdiction, as aforesaid, of violations of city and town ordinances, by-laws and orders; of offences of keeping billiard tables or bowling alleys contrary to the provisions of section one hundred and sixty-nine of chapter one hundred and two; of violations of the laws relative to the public health; and of offences against property in cemeteries; but no single penalty imposed for offences against property in cemeteries shall exceed fifty dollars.

— of violations
of milk and
dairy laws.
1885, 149.
1897, 349.

SECTION 34. They shall have jurisdiction, as aforesaid, of cases arising under the laws relative to the inspection and sale of dairy products and imitations thereof, and of cases arising under the provisions of chapter fifty-six relative to the inspection and sale of milk, and may impose the penalties therein prescribed.

— of felonies
by juvenile
offenders.
1872, 358.
1877, 211, § 6.
1880, 183.
P. S. 155, § 49.
127 Mass. 450.

SECTION 35. They shall have jurisdiction, as aforesaid, of felonies which are not punishable by death or imprisonment for life and which are committed by juvenile offenders under seventeen years of age, and, upon their conviction, may sentence them to any punishment authorized by law for such crime, except imprisonment in the state prison, or they may commit them to any institution established by law for the reformation of juvenile offenders, or may bind them over for trial in the superior court.

— of larcenies;
buying, etc.,
stolen goods.
1804, 143, § 2.
R. S. 126, §§ 18,
23.
1851, 156, § 4.
1852, 4.
1855, 135, § 2.
1857, 80.
G. S. 120, §§ 41,
44.
P. S. 155, §§ 50,
55.
9 Gray, 114.

SECTION 36. They shall have jurisdiction, as aforesaid, of the crime of larceny; of the crime of buying, receiving or aiding in the concealment of stolen property; and of the crime of fraudulently obtaining property by any game, device, sleight of hand, pretended fortune telling, or by any trick or other means by the use of cards or other implements or instruments; if the value of the property in respect of which the crime is committed is not alleged to exceed ten dollars. In all such cases the defendant, upon a first conviction, shall be punished by a fine of not more than fifteen dollars or by imprisonment for not more than six months; and upon a second conviction of the like offence, committed after a former conviction,

12 he shall be punished by a fine of not more than twenty dollars or
13 by imprisonment for not more than one year ; but if the person who
14 is convicted of buying, receiving or aiding in the concealment of
15 such stolen goods or property makes satisfaction to the person in-
16 jured to the full value of the property stolen and not restored, the
17 punishment may be mitigated as justice may require.

1 SECTION 37. They shall have jurisdiction, as aforesaid, of all
2 the crimes mentioned in sections ninety-nine, one hundred, one
3 hundred and five, one hundred and six and one hundred and six-
4 teen of chapter two hundred and eight, if the value of the trees,
5 fruit, flowers or other property injured, destroyed, taken or carried
6 away, or the injury occasioned by the trespass, is not alleged to
7 exceed one hundred dollars : and may punish the same by a fine of
8 not more than one hundred dollars or by imprisonment for not
9 more than six months, or by both such fine and imprisonment ; but
10 if the value of the property so destroyed or injured or the amount
11 of injury done is not alleged to exceed fifteen dollars, the fine im-
12 posed for a violation of said section one hundred and sixteen shall
13 not exceed fifteen dollars or the imprisonment exceed thirty days.

Criminal juris-
diction of
malicious
trespass.
1693-4, 20, § 15.
1698, 7, § 2.
1785, 28, § 1.
1818, 3, § 1.
R. S. 126, § 46.
1846, 52, § 2.
G. S. 120, § 42.
1868, 321, § 2.
P. S. 155, § 51.
141 Mass. 241.

1 SECTION 38. They shall have jurisdiction, as aforesaid, of of-
2 fences under the provisions of section fifty-four of chapter two
3 hundred and eight ; but they shall not impose a greater penalty
4 than is authorized by section thirty of this chapter.

— of unlawful
taking of
animals, etc.
1856, 39, § 2.
G. S. 120, § 43.
P. S. 155, § 52.

1 SECTION 39. They shall have jurisdiction, as aforesaid, of viola-
2 tions of the laws regulating the taking of fish and game, the penalty
3 for which does not exceed a fine of fifty dollars or imprisonment for
4 more than six months.

— of violations
of fish and
game laws.

1 SECTION 40. They shall have jurisdiction, as aforesaid, of of-
2 fences under the provisions of sections six and seven of chapter one
3 hundred and one : and, upon conviction of the defendant, may
4 punish him by a fine of not more than one hundred dollars and by
5 imprisonment for not more than one year.

— of liquor,
etc., nuisances.
1863, 78.
1865, 281.
1866, 280, § 3.
1878, 155.
P. S. 155, § 53.
111 Mass. 427.

1 SECTION 41. They shall have jurisdiction, as aforesaid, of the
2 common law offence of keeping and maintaining a common, ill-
3 governed and disorderly house ; and, upon conviction of the defend-
4 ant, may punish him by a fine of not more than one hundred
5 dollars or by imprisonment for not more than one year.

— of disorderly
houses.
1863, 78.
1865, 281.
1866, 280, § 3.
1878, 155.
P. S. 155, § 53.

1 SECTION 42. They shall have jurisdiction, as aforesaid, of vio-
2 lations of the provisions of chapter one hundred, and of the pro-
3 visions in chapter two hundred and twelve relative to tramps,
4 vagrants and vagabonds and to cruelty to animals.

— of intoxicat-
ing liquors,
tramps, etc.
1866, 235, § 4.
1869, 344, § 8.
1875, 99, § 19.
1878, 203, § 3.

1880, 239, § 7 ; 257, § 4.

P. S. 155, § 54.

1 SECTION 43. They shall have jurisdiction, as aforesaid, of all
2 cases of drunkenness arising under the provisions of chapter two
3 hundred and twelve, and may impose the penalties prescribed by
4 said chapter.

— of drunken-
ness.
1892, 160.

Criminal
jurisdiction
of peddling
contrary to
law.

SECTION 44. They may in their discretion take jurisdiction of offences described in section thirteen of chapter sixty-five, and in such cases may impose a fine of not more than fifty dollars.

1868, 12.

P. S. 155, § 56.

— of selling
obscene
literature.
1894, 433, § 2.

SECTION 45. They shall have jurisdiction, as aforesaid, of offences under the provisions of section twenty of chapter two hundred and twelve, and for a violation thereof may impose the penalties prescribed by said section.

Failure of jus-
tice to attend
in criminal
process.
1883, 175.
156 Mass. 270.

SECTION 46. If a trial justice fails to attend at the time and place to which an examination or trial has been adjourned by him under the provisions of section thirty-four of chapter two hundred and seventeen, any other trial justice for the same county may attend and hear or try said case, and may further adjourn such examination or trial in the same manner as the justice before whom the case was first pending. The justice who so takes cognizance of the case shall make a minute of the proceedings before himself on the complaint and certify the same, and it shall be entered on the records of the justice who makes the final order, sentence or decree in the case. Any recognizance taken by the justice before whom the case was originally pending shall continue in full force and effect. The same costs shall be taxed in any case which is continued or transferred from one trial justice to another as if all the proceedings had been before one justice.

Proceedings
upon death of
justice.
1871, 386.
P. S. 155, § 66.

SECTION 47. If a trial justice before whom any criminal proceeding is pending dies before final judgment has been rendered therein, any other trial justice or any police, district or municipal court in the same county may cause and allow the papers in the case to be brought and entered before him or it, and may thereupon proceed as if the case had been originally commenced before him or it.

GENERAL PROVISIONS.

Contempt.
1784, 28, § 6.
R. S. 85, § 33.
G. S. 120, § 51.
P. S. 155, § 68.
2 Gray, 123.
120 Mass. 121.

SECTION 48. Trial justices may punish such disorderly conduct as interrupts any judicial proceedings before them, or as is a contempt of their authority or persons, by a fine of not more than ten dollars or by imprisonment for not more than fifteen days.

168 Mass. 234.

Records.
1783, 42, § 3.
R. S. 85, § 35.
G. S. 120, § 51.
P. S. 155, § 69.
1888, 211, § 1.
12 Met. 9.
2 Gray, 117.
3 Gray, 574.
4 Gray, 29.
168 Mass. 234.

SECTION 49. They shall keep a record of all their judicial proceedings, both in civil and criminal cases. They shall safely preserve all dockets and records of their judicial proceedings and other official papers in their custody, shall keep them open, under proper regulations, to public inspection and examination and shall furnish copies thereof upon request and payment of such fees as are allowed in similar cases to clerks of courts.

Depositions.
1877, 211, § 5.
P. S. 155, § 70.

SECTION 50. They shall have the same authority to issue commissions to take depositions in cases pending before them as the superior court has in cases pending therein.

Adjournment
of courts.
1783, 42, § 2.

SECTION 51. They may adjourn their courts in all cases on trial before them, civil or criminal, to any other time or place as occasion

3 may require, except as provided in section thirty-four of chapter
4 two hundred and seventeen. R. S. 85, § 32.
G. S. 120, § 52.
P. S. 155, § 71.

145 Mass. 208.

1 SECTION 52. They shall not commence or be concerned in the
2 commencement of civil actions returnable before themselves. Trial justices
not to com-
mence actions
before them-
selves.

1851, 273.

G. S. 120, § 53.

P. S. 155, § 72.

103 Mass. 555.

1 SECTION 53. They shall not be retained or employed as attor-
2 neys before any court, upon appeal or otherwise, in any suit or
3 action previously determined before themselves: nor shall they try
4 any civil action commenced by themselves or by their order or direc-
5 tion; and every civil action so commenced shall be dismissed with
6 costs for the defendant. — not to be
employed as
attorneys, etc.
1783, 42, § 2.
1815, 49.
R. S. 85, § 34.
G. S. 120, § 54.
P. S. 155, § 73.
6 Cush. 331.
11 Cush. 315.

9 Gray, 366.

1 Allen, 210.

102 Mass. 372.

1 SECTION 54. At the end of the trial of a criminal case before a
2 trial justice, he shall pay the fees and expenses of all officers who
3 are entitled thereto and which accrue in such case from the funds in
4 his hands and which are payable to the city or town liable for the
5 payment of such fees and expenses; and all such expenses and fees
6 which are not so paid shall be certified at the end of each month
7 to the treasurer of the city or town liable therefor, who shall pay
8 them to the persons entitled thereto. At the termination of an
9 inquest or a criminal proceeding, he shall also pay their fees to the
10 witnesses for the commonwealth, except those named in section
11 forty-two of chapter two hundred and four, and the fees and ex-
12 penses of officers at inquests out of any funds in his hands which
13 are returnable to the county, and shall take receipts therefor. The
14 amounts so paid and receipted for shall be allowed in the settlement
15 with the county, city and town treasurers, respectively. A trial
16 justice who does not have sufficient funds in his hands which are
17 returnable to the county with which to pay witnesses and officers
18 at inquests as herein provided may make written requisition therefor
19 upon the county treasurer, who shall advance to him not more than
20 one hundred dollars in any one month; but if it appears necessary
21 to the controller of county accounts, he may approve a requisition
22 for not more than two hundred dollars in any one month, and, upon
23 receipt of a requisition so approved, the county treasurer may pay
24 to the trial justice such amount as may be called for. The trial
25 justice shall account for such amounts in his regular settlements
26 with the county treasurer and shall be liable therefor upon his
27 official bond.

Payment of
witnesses and
officers.
1888, 180.
1890, 440, §§ 6, 8.
1891, 325, § 1.
1898, 204, § 1.
1901, 126.

1 SECTION 55. If the commission of a trial justice expires while a
2 judgment rendered by him remains unsatisfied, he may issue execu-
3 tion thereon with the same effect as if it had not expired. Effect of
expiration of
commission.
R. S. 85, § 22.
G. S. 120, § 55.

P. S. 155, § 74.

1 SECTION 56. If the commission of a trial justice expires without
2 renewal, or is terminated by resignation, change of domicile or rev-
3 ocation, he may finish any business which has been commenced or
4 is pending before him and certify copies of his records and papers;
5 or any party to a civil action which has been commenced or is
6 pending before him may enter or transfer such action for proceed-
7 ings before any other trial justice for the same county, in the
8 manner provided in sections twenty-five and twenty-seven. Completion of
unfinished
business.
1860, 187, § 1.
P. S. 155, § 8.
1890, 202.

Completion of unfinished business when commission is renewed.

1788, 19, § 2.
R. S. 85, § 23.
1852, 283, § 4.
G. S. 120, § 56.
P. S. 155, § 75.

SECTION 57. If a trial justice is commissioned and qualified anew at or before the expiration of his former commission, his authority shall continue: and all business which has been commenced by or before him under the former commission may be prosecuted and completed in the same manner as if that commission had continued in force.

Costs to be entered in a record book.

1860, 191, § 7.
P. S. 155, § 77.

SECTION 58. Trial justices shall enter all costs which are taxed and allowed by them in a record book which they shall keep for that purpose, and shall specify the case in which, and the person to whom, they were allowed and the several items of charge specifically; and the receipt of the person who is entitled thereto shall be entered upon the book when the amount so allowed is paid.

Accounts for fines, etc.

1700-1, 21, § 2.
1783, 52, § 8.
1791, 53, § 4.
R. S. 85, § 37.
G. S. 120, § 57.
P. S. 155, § 78.
1887, 438, § 5.
1890, 204, 216.

SECTION 59. They shall, on or before the tenth day of January, April, July and October, in each year, account for and pay over to the county, city or town treasurers, or to such other officer as is authorized by law to receive the same, all money received by them which by law is payable to counties, cities and towns, and shall render to said treasurers or other officer a detailed account thereof under oath. Said payments shall include the balances due and payable at the end of the quarter last preceding the day of payment. A trial justice who violates the provisions of this section shall be punished by a fine of not more than one hundred dollars for each offence.

Annual returns to county treasurers.

1847, 274, § 1.
G. S. 120, § 58.
1876, 4.
P. S. 155, § 79.
14 Allen, 217.

SECTION 60. They shall annually, on the first day of January, return to the county treasurers of their respective counties all fees of sheriffs, deputy sheriffs, constables and witnesses which have been taxed and allowed during the preceding year and which then remain in their hands, and a schedule thereof.

Deposit of records with clerk of courts.

1888, 211, § 2.

SECTION 61. Upon the death, resignation or removal from office of a trial justice, all his dockets, records of his judicial proceedings and other official papers in his custody shall be deposited in the office of the clerk of the courts in the county for which he was designated, or, if he was designated for the county of Suffolk, in the office of the clerk of the superior court for civil business.

Penalty for neglect to deposit.

1888, 211, §§ 3, 4.

SECTION 62. A trial justice who neglects for three months after his resignation or removal from office so to deposit his dockets, records and other official papers shall forfeit not more than five hundred dollars, and the executor or administrator of a deceased trial justice who neglects for three months after the filing of his bond so to deposit in the clerk's office the dockets, records and other official papers of the deceased which come into his hands shall forfeit a like amount.

— for defacement of records.

1888, 211, § 5.

SECTION 63. Whoever knowingly and wilfully destroys, defaces or conceals the dockets, records or other official papers of a trial justice shall forfeit not more than one thousand dollars, and shall be liable in damages to any person who is injured thereby.

CHAPTER 162.

OF PROBATE COURTS.

- SECTIONS 1-7. — Courts and Jurisdiction.
- SECTIONS 8-28. — Appeals.
- SECTIONS 29-54. — General Provisions.
- SECTIONS 55-60. — Sessions of the Courts.

COURTS AND JURISDICTION.

- 1 SECTION 1. Probate courts shall be courts of record, and the

2 judge and register of probate and insolvency for each county shall be

3 the judge and register of the probate court of such county.

1858, 93, § 1. G. S. 117, § 1. 1862, 68, § 3. P. S. 156, § 1.

Courts of record, etc. 1783, 46, §§ 1, 2. 1817, 190, §§ 1, 2. R. S. 83, §§ 1, 20.
- 1 SECTION 2. The probate courts shall be courts of superior and

2 general jurisdiction with reference to all cases and matters in which

3 they have jurisdiction, and it shall not be necessary for any order,

4 decree, sentence, warrant, writ or process which may be made,

5 issued or pronounced by them to set out any adjudication or cir-

6 cumstances with greater particularity than would be required in

7 other courts of superior and general jurisdiction, and the like pre-

8 sumption shall be made in favor of proceedings of the probate

9 court as would be made in favor of proceedings of other courts of

10 superior and general jurisdiction.

Superior jurisdiction. 1891, 415, § 4.
- 1 SECTION 3. The probate court shall have jurisdiction of the pro-

2 bate of wills, of granting administration of the estates of persons

3 who, at the time of their decease, were inhabitants of or resident

4 in the county, and of persons who die out of this commonwealth

5 leaving estate to be administered within the county; of the appoint-

6 ment of guardians to minors and others: of all matters relative to

7 the estates of such deceased persons and wards: of petitions for the

8 adoption of children, and for the change of names: and of such other

9 matters as have been or may be placed within their jurisdiction.

Jurisdiction. 1783, 46, § 1. 1817, 190, § 1. R. S. 64, § 3; 83, §§ 5, 6. 1851, 256, § 1; 324, § 1. G. S. 117, § 2. P. S. 156, § 2. 5 Pick. 29, 65, 370, 519. 10 Cush. 17. 2 Gray, 228. 4 Allen, 410. 102 Mass. 186. 131 Mass. 477.
- 1 SECTION 4. The probate court shall have exclusive original juris-

2 diction of petitions of married women relative to their separate

3 estate, and of petitions or applications relative to the care, custody,

4 education and maintenance of minor children which is provided for

5 by sections thirty-one, thirty-two and thirty-seven of chapter one

6 hundred and fifty-three.

Same subject. 1887, 332, § 2.
- 1 SECTION 5. The probate court shall have jurisdiction in equity,

2 concurrent with the supreme judicial court and with the superior

3 court, of all cases and matters relative to the administration of the

4 estates of deceased persons, to wills or to trusts which are created

5 by will or other written instrument. Such jurisdiction may be exer-

6 cised upon petition according to the usual course of proceedings in

7 the probate court.

Equity juris-diction. R. S. 63, § 12. G. S. 100, § 22. 1880, 163. P. S. 141, § 27. 1891, 415, § 1. 1892, 116. 144 Mass. 135. 166 Mass. 294. 175 Mass. 199, 265.

Court first taking jurisdiction to retain it.

1785, 12, § 1.
1817, 190, §§ 1, 16.
R. S. 62, § 20;
64, § 3; 79, § 31;
83, § 14.
G. S. 117, § 3.
P. S. 156, § 3.

SECTION 6. If a case is within the jurisdiction of the probate courts in two or more counties, the court which first takes cognizance thereof by the commencement of proceedings therein shall retain jurisdiction thereof, and shall exclude the jurisdiction of the probate courts of all other counties; and the administration or guardianship which is first granted shall extend to all the estate of the deceased or ward in the commonwealth.

Jurisdiction of trusts.

1874, 352, § 3.
P. S. 141, § 28.

SECTION 7. All matters of trust of which probate courts have jurisdiction, except those arising under wills, shall be within the jurisdiction of the probate court of any county in which any of the parties interested in the trust reside, or in which any of the land held in trust is situated; but such jurisdiction, when once assumed, shall exclude the probate court of any other county from taking jurisdiction of any matter subsequently arising in relation to the same trust.

APPEALS.

Supreme court of probate.

1783, 46, § 3.
1817, 190, § 16.
R. S. 83, § 33.
G. S. 117, § 7.
P. S. 156, § 5.

SECTION 8. The supreme judicial court shall be the supreme court of probate, and it shall have appellate jurisdiction of all matters which are determinable by the probate courts and by the judges thereof, except as otherwise expressly provided.

Appeal.

1692-3, 14, § 1;
46, § 1.
1696, 8, § 2.
1700-1, 5.
1783, 46, § 4.
1817, 190, § 7.

SECTION 9. A person who is aggrieved by an order, sentence, decree or denial of a probate court or of a judge of such court may, except as otherwise provided, appeal therefrom to the supreme judicial court.

R. S. 83, § 34.

G. S. 117, § 8.

P. S. 156, § 6.

4 Pick. 41.
18 Pick. 285.
11 Met. 390.
4 Cush. 498.

1 Gray, 518.
3 Allen, 556.
111 Mass. 346.
128 Mass. 592.

129 Mass. 527.
140 Mass. 596.
143 Mass. 234.
144 Mass. 135, 415.

148 Mass. 421.
154 Mass. 574.
170 Mass. 93.
175 Mass. 483.

Entry of

appeal.
1719-20, 10, § 5.
1783, 46, § 4.
1817, 190, § 7.
R. S. 83, § 36.
G. S. 117, § 9.
P. S. 156, § 7.
1888, 290, § 1.
118 Mass. 508.
153 Mass. 439.
165 Mass. 240.

SECTION 10. Notice of the appeal shall be filed in the registry of probate and the appeal shall be entered in the supreme judicial court within thirty days after the act appealed from. Upon the entry of the appeal, the appellant shall file a statement of his objections to the act appealed from. A copy of such notice, and of so much of the record of the probate court as relates to the appeal, shall be filed in the supreme judicial court upon the entry of the appeal, or as soon as may be thereafter.

Notice of entry.

1719-20, 10, § 5.
1783, 46, § 4.
1817, 190, § 7.
R. S. 83, § 37.
G. S. 117, § 10.
P. S. 156, § 8.
1888, 290, § 2.

SECTION 11. Notice of the entry of the appeal shall be given to all parties adversely interested who shall have entered appearances in the probate court, and it may be served in the manner provided by the rules of court for the service of notices; but the court may order further notice to be given.

Consolidation of appeals by appellant.

1888, 290, § 4.

SECTION 12. An appellant from decrees of the probate court settling different accounts of an executor, administrator, guardian or trustee may unite his appeals in one notice of appeal and enter them as one appeal in the supreme judicial court; and an appeal taken by another appellant from any of the same decrees, or from another decree made at the same time or earlier, settling any other account of such executor, administrator, guardian or trustee, may be entered in the supreme judicial court as part of the matter com-

9 prised in the appeal previously entered. The court may, upon
 10 appeal, deal with such different accounts as if they formed one con-
 11 tinuous account, and may give effect to any alterations which it may
 12 make in any account by altering the balance of the last account
 13 without altering the balance of any previous account.

1 SECTION 13. If a person who is aggrieved omits, without default
 2 on his part, to claim or prosecute his appeal and it appears that
 3 justice requires a revision of the case, the supreme court of pro-
 4 bate or the superior court, in cases in which appeals may be taken
 5 thereto, may, upon his petition and upon terms, allow an appeal to
 6 be entered and prosecuted. Such petition may be entered in the
 7 clerk's office at any time and the order of notice thereon may be
 8 made returnable at a rule day. Late entry of
 appeal.
 1812, 29.
 1817, 190, § 8.
 R. S. 83, § 39.
 G. S. 117, § 11.
 P. S. 156, § 9.
 1890, 261, § 2.
 1 Gray, 518.
 14 Gray, 279.
 7 Allen, 242.
 13 Allen, 297.
 139 Mass. 190.

1 SECTION 14. Such appeal shall not be allowed without due
 2 notice to the party adversely interested, nor unless the petition
 3 therefor is filed within one year after the passing of the decree or
 4 order complained of, except that, if the petitioner was out of the
 5 United States at the time of the passing of the decree or order, he
 6 may file his petition at any time within three months after his re-
 7 turn and within two years after the act complained of. Same subject.
 1719-20, 10, § 6.
 1783, 46, § 4.
 1812, 29.
 1817, 190, §§ 7, 8.
 R. S. 83, §§ 40,
 41.
 G. S. 117, §§ 12,
 13.
 P. S. 156, § 19.

1 SECTION 15. Appeals and petitions for appeals shall be entered
 2 on the same docket with cases in equity, and shall have the same
 3 rights as to hearing and determination as such cases. Docket.
 G. S. 117, § 14.
 P. S. 156, § 11.
 162 Mass. 450.

1 SECTION 16. After an appeal has been claimed and notice has
 2 been given at the registry of probate, all proceedings in pursuance of
 3 the act appealed from shall, except as otherwise expressly provided,
 4 be stayed until the determination thereof by the supreme court of
 5 probate; but if, upon such appeal, such act is affirmed, it shall there-
 6 after be of full force and validity. If the appellant in writing waives
 7 his appeal before the entry thereof, the probate court may proceed as
 8 if no appeal had been taken. Stay of pro-
 ceedings upon
 appeal.
 1783, 46, § 5.
 1817, 19 § 9.
 R. S. 83, § 43.
 G. S. 117, § 15.
 1860, 189.
 P. S. 156, § 12.
 4 Cush. 46.
 16 Gray, 577.
 128 Mass. 578.
 136 Mass. 297.
 144 Mass. 415.

1 SECTION 17. An appeal from a final or interlocutory order or
 2 decree in equity of a probate court which is made in the exercise of
 3 any jurisdiction in equity conferred upon it shall not suspend or stay
 4 proceedings under such order or decree, pending the appeal. But
 5 the probate court, or a justice of the supreme judicial court in case of
 6 such appeal, may stay all proceedings under such order or decree
 7 and make the necessary or proper orders to protect the rights of
 8 persons interested, pending the appeal, and any such order of the
 9 probate court for a stay of proceedings, or for protection of any
 10 such rights, may be varied or discharged by a justice of the supreme
 11 judicial court upon motion, and shall not be otherwise subject to an
 12 appeal to that court. Appeals in
 equity.
 1891, 415, § 3.

1 SECTION 18. A person who is aggrieved by an order, sentence,
 2 decree or denial of a probate court upon a petition for separate sup-
 3 port under the provisions of section thirty-three of chapter one
 4 hundred and fifty-three, or upon the petition of a married woman
 — to superior
 court.
 1887, 332, § 3
 1890, 261, § 3.

relative to her separate estate, or upon a petition or application relative to the care, custody, education and maintenance of minor children provided for by sections thirty-one, thirty-two and thirty-seven of said chapter, may appeal therefrom to the superior court in the manner provided in sections ten and eleven of this chapter, and all proceedings thereon shall, so far as practicable, be the same as on appeals to the supreme judicial court.

Except a
decree for
separate main-
tenance, etc.
1880, 64, § 2.
P. S. 156, § 13.
1890, 261, § 1.
144 Mass. 278.

SECTION 19. A decree or order of a probate court made in proceedings under the provisions of section thirty-three of chapter one hundred and fifty-three shall have effect, notwithstanding an appeal, until otherwise ordered by a justice of the superior court, who may, in any county, suspend or modify such decree or order during the pendency of the appeal.

— or for re-
moval of
executor, etc.
1880, 186, §§ 1-3.
1881, 296.
P. S. 156, § 14.
155 Mass. 437.

SECTION 20. A decree of a probate court removing an executor, administrator, guardian or trustee, shall have effect, notwithstanding an appeal therefrom, until otherwise ordered by a justice of the supreme court of probate, and a decree of a justice of the supreme court of probate upon appeal affirming such decree, or ordering such removal when the same has been refused by the probate court, shall have effect, notwithstanding an appeal therefrom to the full court until otherwise ordered by the full court. The probate court may, in either such case, appoint a successor to the person removed, to whom the person removed shall thereupon deliver all the property held by him as such executor, administrator, guardian or trustee and who shall proceed in the performance of his duties in like manner as if no appeal had been taken; but if the decree of removal is reversed by a final decree of the supreme judicial court, the powers of such successor shall thereupon cease and he shall forthwith deliver to his predecessor in the trust, or to such person as the court may order, all property of the estate in his hands.

Same subject.
1880, 186, § 4.
P. S. 156, § 15.

SECTION 21. A decree of a probate court made in pursuance of the provisions of the preceding section shall have effect, notwithstanding an appeal therefrom, until otherwise finally determined by the appellate court.

Modification of
decree ap-
pealed from.
1880, 186, § 5.
P. S. 156, § 16.

SECTION 22. After an appeal has been claimed from an order or decree referred to in the two preceding sections, and before such appeal has been finally determined, a justice of the supreme court of probate may suspend or modify such order or decree during the pendency of such appeal.

Reversal or
affirmance of
decree.
R. S. 83, § 44.
G. S. 117, § 16.
P. S. 156, § 17.
146 Mass. 377.
177 Mass. 238.

SECTION 23. The supreme judicial court may, upon appeal, reverse or affirm, in whole or in part, any decree or order of the probate court, and may enter such decree thereon as the probate court ought to have entered, may remand the case for further proceedings, or make any other order therein, as law and justice may require.

Failure to
prosecute
appeal.

SECTION 24. If an appellant fails to enter and prosecute his appeal, the supreme court of probate may, upon the complaint of any

3 person interested, affirm the former decree or order, or make such
4 other order as law and justice may require, or, if the appellant fails
5 to enter his appeal within the time allowed by law, the probate court
6 from which the appeal was taken may, upon petition of any person
7 interested, and upon such notice to the appellant as the court shall
8 order, dismiss the appeal and affirm the decree or order appealed
9 from, and further proceed as if no appeal had been taken.

1719-20, 10, § 5.
1783, 46, § 4.
1817, 190, § 7.
R. S. 83, § 45.
G. S. 117, § 17.
1880, 19.
P. S. 156, § 18.
153 Mass. 8.

1 SECTION 25. The supreme judicial court, upon request of a
2 party to a probate matter pending therein, may in its discretion
3 frame issues of fact to be tried by a jury and direct them to be tried
4 in the supreme judicial court or in the superior court in the county
5 in which the matter is pending, or, upon the request of all parties, in
6 any other county.

123 Mass. 500. 157 Mass. 90. 167 Mass. 524. Jury issues.
1783, 46, § 4.
1817, 190, § 7.
R. S. 62, § 16;
83, § 46.
G. S. 92, § 20;
117, § 18.
P. S. 156, § 19.
1895, 116.
120 Mass. 281.

1 SECTION 26. If there is no regular sitting for such trial within
2 three months after such issues have been framed, a jury may be
3 summoned as provided in equity cases by section thirty-seven of
4 chapter one hundred and fifty-nine.

Special jury.
1874, 339, § 3.
P. S. 156, § 20.

1 SECTION 27. The supreme judicial court or the superior court
2 may at any time, in its discretion and upon terms, consolidate any
3 separate appeals from the probate court pending therein, respec-
4 tively, and may thereafter deal with such consolidated appeals to-
5 gether or otherwise, as justice requires.

Consolidation
of appeals by
court.
1888, 290, § 5.
1890, 261, § 3.

1 SECTION 28. Probate appeals in the counties of Berkshire,
2 Franklin, Hampden and Hampshire may be heard and determined at
3 Springfield at the same times and in the same manner as is provided
4 in section forty-one of chapter one hundred and fifty-nine relative to
5 the hearing and determination of equity cases in said counties; and
6 a probate appeal pending in any of said counties shall be considered
7 ready for a hearing at any time after the rule day at which it is en-
8 tered in the supreme court of probate, and it may be heard before
9 the justice sitting at Springfield, unless there is an order for a jury.

Appeals in
western
counties.
1874, 339, §§ 1, 2.
P. S. 156, § 21.

GENERAL PROVISIONS.

1 SECTION 29. The judges of the probate courts or a majority of
2 them shall from time to time make rules for regulating the practice
3 and for conducting the business in their courts in all cases not ex-
4 pressly provided for by law and shall prescribe forms, and, as soon
5 as convenient after making or prescribing them, shall submit a copy
6 of their rules, forms and course of proceedings to the supreme
7 judicial court, which may alter and amend them and, from time to
8 time, make such other rules and forms for regulating the proceedings
9 in the probate courts as it considers necessary in order to secure
10 regularity and uniformity.

Rules.
R. S. 83, § 8.
G. S. 117, § 19.
P. S. 156, § 22.
1893, 372, § 1.

1 SECTION 30. The supreme judicial court and the probate courts
2 shall make rules requiring notice of any hearing, motion or other
3 proceeding before said courts to be given to parties interested or to
4 the attorney who has entered his appearance for them.

— as to notice.
1890, 420, § 2.

Business out of court. 1869, 424. 1870, 275. P. S. 156, § 24.	SECTION 31. Judges of the probate courts may transact business out of court at any time and place, if all parties who are entitled to notice assent thereto in writing or voluntarily appear; and in such cases, their decrees shall be entered as of such sessions of the court as the convenience of the parties may require.	1 2 3 4 5
Orders of notice, etc. R. S. 83, § 4. G. S. 117, § 23. P. S. 156, § 25.	SECTION 32. Orders of notice and other official acts which are passed as of course, and which do not require a previous notice to an adverse party, may be issued and performed at any time.	1 2 3
Enforcement of orders in equity. 1891, 415, § 2.	SECTION 33. Probate courts shall have like power to enforce all orders, decrees and sentences made by them in the exercise of any authority or jurisdiction which may be conferred upon them, and to punish contempts of their authority, as the supreme judicial court has in like cases.	1 2 3 4 5
Revocation of warrants and commissions. R. S. 83, § 31. G. S. 117, § 24. P. S. 156, § 26.	SECTION 34. A warrant or commission for the appraisal of an estate, for examining the claims on insolvent estates, for the partition of land or for the assignment of dower or curtesy or other interests in land may be revoked by the court for sufficient cause, and a new commission may be issued or other appropriate proceedings taken.	1 2 3 4 5 6
Decrees to be in writing, and, with wills, etc., to be recorded. R. S. 83, § 7. G. S. 117, § 21. P. S. 156, § 27.	SECTION 35. Decrees and orders of the probate courts and of the judges thereof shall be made in writing, and the registers shall record in books which they shall keep for the purpose all such decrees and orders, all wills proved in the court, with the probate thereof, all letters testamentary and of administration, all warrants, returns, reports, accounts and bonds, and all other acts and proceedings, which are required to be recorded by the rules of the court or by the order of the judge.	1 2 3 4 5 6 7 8
Docket and index. 1881, 215, § 3. P. S. 156, § 28.	SECTION 36. Each register shall keep a docket of all cases and matters in the probate court of his county, and shall enter therein every case or matter by its appropriate title and number, brief memoranda of all proceedings had and papers filed therein, the dates of such proceedings or filing of such papers, and references to the places in which the proceedings or papers are recorded, if there is a record thereof. He shall also keep a separate alphabetical index of all such cases and matters, which shall refer both to said docket and to the files of the court. Such docket and index shall at all reasonable times be open to public inspection.	1 2 3 4 5 6 7 8 9 10
Oaths. R. S. 83, § 30. 1852, 241. G. S. 117, § 28. 1871, 122, § 1. P. S. 156, § 30.	SECTION 37. Oaths which may be required in proceedings in probate courts may be administered by the judge or register in or out of court or by a justice of the peace, and, when administered out of court, a certificate thereof shall be returned and filed or recorded with the proceedings; but the judge may require any such oath to be taken before him in open court.	1 2 3 4 5 6
Enforcement of delivery of property by executors, etc., who resign. 1881, 140. P. S. 156, § 31.	SECTION 38. If an executor, administrator, guardian or trustee resigns his trust and neglects or refuses to deliver to his successor all the property held by him under his trust, the probate court may, upon the application of such successor or of any person beneficially	1 2 3 4

5 interested, order such delivery to be made, and shall have like
6 powers for enforcing such order as are given to it by the provisions
7 of section thirty-three.

1 SECTION 39. A probate court may, upon application of a person
2 interested in an estate in process of settlement in such court, direct
3 the temporary investment of any money belonging to such estate in
4 securities to be approved by the judge; or it may authorize the
5 money to be deposited in any bank or institution in this common-
6 wealth which is empowered to receive such deposits, upon such
7 interest as such bank or institution may agree to pay.

Temporary in-
vestments.
1873, 224, § 1.
P. S. 156, § 32.

1 SECTION 40. A duly authorized attorney-at-law may enter his
2 appearance as attorney for the party represented by him in any pro-
3 ceeding in a probate court, and all processes and notices which may
4 be served upon him shall have the same force and effect as if served
5 upon the party whom he represents.

Appearances.
1890, 420, § 1.

1 SECTION 41. In proceedings in probate courts, the petitioner or
2 the respondent may, at any time after the filing of the petition, file
3 interrogatories in the register's office for the discovery of facts and
4 documents material to the support or defence of the proceeding.
5 Such interrogatories shall be answered under oath by the adverse
6 party in the same manner and subject to the same restrictions and
7 regulations as are provided by chapter one hundred and seventy-
8 three relative to interrogatories in civil actions.

Interroga-
tories.
1879, 186, § 1.
P. S. 156, § 33.

1 SECTION 42. If a party neglects or refuses to expunge, amend
2 or answer according to the provisions of said chapter one hundred
3 and seventy-three, the petition shall be dismissed or its prayer
4 granted, or such other order or decree entered as may be required.

Order or
decree.
1879, 186, § 2.
P. S. 156, § 34.

1 SECTION 43. Upon complaint to a probate court by a person in-
2 terested in the estate of a person deceased against a person who is
3 suspected of having fraudulently received, concealed, embezzled or
4 conveyed away any property, real or personal, of the deceased, the
5 court may cite such suspected person, although he is executor or
6 administrator, to appear and be examined under oath upon the
7 matter of the complaint. If the person so cited refuses to appear
8 and submit to examination, or to answer such interrogatories as may
9 be lawfully propounded to him, the court may commit him to jail
10 until he submits to the order of the court. The interrogatories and
11 answers shall be in writing, signed by the party examined, and shall
12 be filed in the court.

Persons sus-
pected of con-
cealing prop-
erty may be
examined
under oath.
C. L. 331, § 2.
1692-3, 16, § 2.
1696, 8, § 2.
1700-1, 5.
1752-3, 12, §§ 4, 5.
1783, 32, § 11.
R. S. 65, § 7.
1857, 71, § 2.
G. S. 96, § 6.
P. S. 133, § 1.
4 Mass. 318.
7 Pick. 14.
8 Pick. 484.
12 Met. 316.

4 Cush. 46. 99 Mass. 470. 175 Mass. 4.

1 SECTION 44. In cases which are contested before a probate court
2 or before the supreme court of probate, costs and expenses in the
3 discretion of the court may be awarded to either party, to be paid
4 by the other party, or they may be awarded to either or both parties,
5 to be paid out of the estate which is the subject of the controversy,
6 as justice and equity may require. If costs are awarded to be paid
7 by one party to the other, execution may issue.

Costs.
1783, 46, § 4.
1817, 190, §§ 7,
44.
R. S. 83, §§ 47,
48.
G. S. 117, §§ 25,
26.
P. S. 156, §§ 35,
36.
1884, 131.
7 Gray, 467.
5 Allen, 87.

112 Mass. 269. 134 Mass. 249. 139 Mass. 59. 147 Mass. 15.

Waiver of notice. 1874, 346, § 3. P. S. 156, § 37. 151 Mass. 595.	SECTION 45. The notice which may be required by law in any proceeding in a probate court may be dispensed with if all parties who are entitled thereto assent in writing to such proceedings or waive notice.	1 2 3 4
Appointment of one appraiser. 1896, 210. 1897, 147.	SECTION 46. In appraisals of property, the judge or register may appoint only one appraiser if in his opinion the nature of the property makes it advisable so to do.	1 2 3
Selection of newspapers for notices. 1851, 138. G. S. 117, § 29. P. S. 156, § 38.	SECTION 47. Parties to probate proceedings may select the newspapers in which the notices which may be ordered upon their petitions shall be published; but the court may order the notice to be published in one other newspaper.	1 2 3 4
Receipts, etc., to executors, etc., may be recorded. 1864, 43. P. S. 156, § 39.	SECTION 48. A paper or instrument, discharging a claim or purporting to acknowledge the performance of a duty or the payment of money for which an executor, administrator, guardian or trustee is chargeable or accountable in a probate court, shall, upon the request of a party interested, be recorded in the registry of said court; and the registers of probate in their respective counties shall enter, record, index and certify any original paper or instrument offered as aforesaid, and shall receive for such services the like compensation as registers of deeds would be entitled to demand for like services. Such compensation shall be paid by the person who leaves such paper or instrument for record, at the time of leaving it.	1 2 3 4 5 6 7 8 9 10 11
Copy of certain papers without charge. 1823, 141, § 3. R. S. 83, § 53. G. S. 117, § 30. P. S. 156, § 40.	SECTION 49. The register of probate shall make without charge one certified copy of all wills proved, of inventories returned, of accounts settled, of partitions of land, of assignments of dower or curtesy, and of all orders and decrees of the court, and shall deliver such copies upon demand to the executor, administrator, guardian, widow, heir or other person who is principally interested.	1 2 3 4 5 6
Original will may be taken from registry. 1876, 165. P. S. 156, § 41.	SECTION 50. The probate court in which a will has been duly proved, allowed and recorded may, after the expiration of the thirty days within which an appeal may be taken from the decree admitting such will to probate, upon the petition of the executor or of a legatee named in such will, or of any person interested in the estate of the testator, and after notice and a hearing, permit the original will, if it appears to be necessary for the purpose, to be taken from the files of such court for the purpose of establishing the right or title of such executor, legatee or person to the estate of the testator in any foreign country.	1 2 3 4 5 6 7 8 9 10
Court rooms, rooms for record, etc., to be provided. 1823, 141 § 4. R. S. 83, § 54. G. S. 117, § 31. 1872, 125. 1876, 234, § 1. P. S. 156, § 42.	SECTION 51. County commissioners shall provide and maintain suitable rooms for the use of the probate courts, ample fireproof rooms and suitable alcoves, cases and boxes for the safe keeping of all records, files, papers and documents which belong to the several registries of probate, and shall also provide all books which may be necessary for keeping the records, and all printed blanks and stationery which are used in probate proceedings.	1 2 3 4 5 6 7
Same subject. 1876, 234, § 2. P. S. 156, § 43.	SECTION 52. If in the opinion of a justice of the supreme judicial court the fireproof rooms provided under the preceding section are	1 2

3 insufficient, he shall, upon application of the judge or register of
4 probate of the county, certify the need of additional accommodations
5 to the county commissioners of such county, and they shall forth-
6 with provide such additional fireproof rooms and other accommoda-
7 tions as may be necessary.

1 SECTION 53. If, in the judgment of the county commissioners, Preservation
of dockets, etc.
1891, 225.
[1 Op. A. G.
443.]
2 public convenience so requires, they may, at the expense of the
3 county, cause the files and records of the probate courts, except in
4 the county of Suffolk, to be rearranged, indexed and docketed, the
5 dockets which are worn or defaced to be renewed and the indexes
6 to be consolidated, under the direction and supervision of the regis-
7 ters of said courts.

1 SECTION 54. The expense of recording probate proceedings in Expense of
recording probate
proceedings in Suffolk.
1875, 238, § 2.
P. S. 156, § 44.
1884, 118.
1887, 217.
1893, 422.
2 the county of Suffolk, not exceeding forty-five hundred dollars in
3 any one year, shall be paid by said county, upon the official certifi-
4 cate of the register, countersigned by a judge of the probate court
5 for said county, in the amounts and to the persons who are named
6 in such certificate.

SESSIONS OF THE COURTS.

1 SECTION 55. The judge of a probate court may keep order in Contempt of
court.
1783, 46, § 1.
2 court, and may punish any contempt of his authority.
1817, 190, § 1. R. S. 83, § 10. G. S. 117, § 33. P. S. 156, § 45.

1 SECTION 56. The probate court in each county shall always be Courts always
open.
1895, 215.
1901, 61.
2 open, except on the Lord's day and legal holidays, for all hearings,
3 for matters in equity, for proceedings in contempt and for making
4 orders and decrees in all matters before them; but the times of all
5 hearings shall be discretionary with the judges of said courts.

1 SECTION 57. The judge of a probate court may adjourn the court Adjournment.
1811, 139.
1829, 119, § 2.
R. S. 83, § 3.
1836, 41.
G. S. 117, § 34.
P. S. 156, § 46.
2 as occasion requires; and if he is absent at the time appointed for
3 holding a court, the register shall adjourn it as he may consider
4 necessary or as the judge may order. The register may also
5 adjourn the court when there is a vacancy in the office of judge.

1 SECTION 58. If the regular time for holding a probate court No courts on
holidays or
election days.
1884, 141.
2 occurs on a legal holiday or on the day of an annual state election,
3 the court shall be held on the next secular day thereafter; on which
4 day all notices, citations, orders and other papers made returnable
5 at said regular time shall be returnable. The proceedings thereon
6 shall be of the same validity as if the notices, citations, orders and
7 other papers had been made so returnable.

1 SECTION 59. No court shall be held by adjournment or other- Court not to be
held without
register, etc.
R. S. 83, § 20.
G. S. 117, § 35.
2 wise unless the register, assistant register or a temporary register is
3 present.
P. S. 156, § 47.

1 SECTION 60. Probate courts shall be held in each year at the — when and
where held.
Const., c. 111,
art. IV.
1719-20, 10, § 8.
1817, 190, § 3.
R. S. 83, §§ 2,
55-57.
2 times and within the cities and towns hereinafter mentioned, in such
3 places therein as the judges shall from time to time appoint. Suf-
4 ficient notice of such appointments shall be given by the judges, as

G. S. 117, § 36.
P. S. 156, § 48.

Barnstable.
1857, 113.
1867, 307.
1868, 196.
1869, 277.
1877, 94.
1893, 343.

Berkshire.
1849, 41.
1857, 16.
1868, 325, § 2;
329.
1869, 60, § 1.
1872, 202.

Bristol.
1842, 88.
1857, 159, § 1.
1862, 5, § 1.
1878, 121.
1898, 199.

Dukes County.
1856, 265.
1859, 56.
1862, 114.

Essex.
1848, 234.
1853, 407.
1874, 273.

Franklin.
1850, 244.
1867, 249.
1887, 46.
1898, 218.
1901, 259.

Hampden.
1836, 256.
1843, 29.
1850, 287.
1865, 123.
1874, 157.
1884, 294.

Hampshire.
1836, 256.
1843, 40.
1866, 60.
1874, 146.
1886, 145.

often as changes take place, by advertisement in a newspaper or by posting the notice in public places :

For the county of Barnstable, at Barnstable, on the second Tuesday of January, February, March, May, June, July, August, September, November and December, and on the first Tuesday of April and October.

For the county of Berkshire, at Pittsfield, on the first Tuesday of January, February, March, April, May, June, September, October and December, on the third Tuesday of July, and on the Wednesday next after the first Monday of November ; at Lee, on the Wednesday next after the first Tuesday of January, April and October, and on the Wednesday next after the third Tuesday of July ; at Adams, on the Thursday next after the first Tuesday of January and October, on the Wednesday next after the first Tuesday of March, and on the Thursday next after the third Tuesday of July ; and at Great Barrington, on the Wednesday next after the first Tuesday of February, May, September and December.

For the county of Bristol, at Fall River, on the first Friday of January, April, July and October, on the third Friday of February, May and November, and on the second Friday of September ; at New Bedford, on the first Friday of February, May, August and November, and on the third Friday of March, June and September ; and at Taunton, on the first Friday of March, June, September and December, and on the third Friday of January, April, October and December.

For the county of Dukes County, at Edgartown, on the third Monday of January and July, and on the first Monday of March and December ; at Vineyard Haven, on the third Monday of April, and on the first Monday of September ; and at West Tisbury, on the first Monday of June, and on the third Monday of October.

For the county of Essex, at Salem, on the first Monday of each month and on the third Monday of each month except August ; at Lawrence, on the second Monday of January, March, May, June, July, September and November ; at Haverhill, on the second Monday of April and October ; at Newburyport, on the fourth Monday of January, March, May, June, July, September and November ; and at Gloucester, on the fourth Monday of April and October.

For the county of Franklin, at Greenfield, on the first Tuesday of each month except November, and on the third Tuesday of February, March and December ; at Orange, on the third Tuesday of January, April, July and October ; at Shelburne Falls, on the third Tuesday of May and November ; at Northfield, on the third Tuesday of September ; and at Conway, on the third Tuesday of June.

For the county of Hampden, at Springfield, on the first Wednesday of each month except August ; at Holyoke, on the third Wednesday of January, March, June and October ; at Palmer, on the second Wednesday of February, May and September, and the fourth Wednesday of November ; and at Westfield, on the third Wednesday of February, May, September and December.

For the county of Hampshire, at Northampton, on the first Tuesday of each month ; at Amherst, on the second Tuesday of January, March, June, August and November ; at Belchertown, on the second Tuesday of May and October ; at Williamsburg, on the third

59 Tuesday of May and October; and at Ware, on the second Tuesday
60 of February, September and December and on the third Tuesday
61 of June.

62 For the county of Middlesex, at Cambridge, on the first, second
63 and fourth Tuesday of each month, except August, and at Lowell,
64 on the third Tuesday of each month, except August.

Middlesex.
1848, 210.
1857, 78.
1866, 116.

1867, 220, § 2.

1868, 213.

1889, 182.

65 For the county of Nantucket, at Nantucket, on the Thursday next
66 after the second Tuesday of each month.

Nantucket.
1828, 26.
1843, 4.

67 For the county of Norfolk, at Dedham, on the first and third
68 Wednesday, at Quincy, on the second Wednesday, and at Brook-
69 line, on the fourth Wednesday of each month except August. The
70 county commissioners of the county of Norfolk may provide, fur-
71 nish and maintain suitable rooms and accommodations in the city
72 of Boston for the use of the probate court for the county of Nor-
73 folk, for the hearing and trial of such contested cases in said court
74 as the parties thereto or their counsel may desire to have heard and
75 tried in the city of Boston.

Norfolk.
1830, 147.
1868, 214.
1870, 193.
1898, 201.
1900, 319.

76 For the county of Plymouth, at Plymouth, on the second Mon-
77 day of each month except August, and at Brockton, on the fourth
78 Monday of each month except July.

Plymouth.
1863, 245.
1881, 203.
1887, 63.

1889, 237, 269.

79 For the county of Suffolk, at Boston, on each Thursday, except
80 the first, second, fourth and fifth Thursdays of August.

Suffolk.
1838, 54.
1873, 375.

1878, 127.

1881, 115.

1892, 202.

81 For the county of Worcester, at Worcester, on the first, second,
82 third and fifth Tuesday of each month except August, and at Fitch-
83 burg on the fourth Tuesday of each month except August.

Worcester.
1822, 2.
1836, 231.
1837, 141.
1846, 128.

1854, 318.

1869, 253.

1878, 128.

1893, 348.

CHAPTER 163.

OF COURTS OF INSOLVENCY.

- SECTIONS 1-19. — General Provisions.
- SECTIONS 20-30. — Petition by Debtor. First Meeting.
- SECTIONS 31-48. — Debts and Proof of Claims.
- SECTIONS 49-81. — Assignment and Assignee.
- SECTIONS 82-87. — Examination of Debtor.
- SECTIONS 88-105. — Second and Third Meetings. Oath and Discharge.
- SECTIONS 106-109. — Matters Avoiding Discharge.
- SECTIONS 110-112. — Preferences.
- SECTIONS 113-115. — Allowance and Surplus.
- SECTIONS 116-128. — Accounts and Dividends.
- SECTIONS 129-132. — Petition by Creditors.
- SECTIONS 133-135. — Petition by Creditors of Insane Persons.
- SECTION 136. — Concealment of Property.
- SECTIONS 137-142. — Partnerships.
- SECTIONS 143-149. — Corporations.
- SECTIONS 150-169. — Composition.
- SECTIONS 170-175. — Fees and Costs.
- SECTION 176. — Vacating Proceedings.
- SECTION 177. — Returns.

GENERAL PROVISIONS.

Courts of record, etc. 1856, 284, § 1. 1858, 193. G. S. 118, § 1. P. S. 157, § 1.	SECTION 1. The courts of insolvency shall be courts of record, and the judge and register of probate and insolvency for each county shall be the judge and register of the court of insolvency for such county.	1 2 3 4
Superior jurisdiction. 1894, 164, § 3.	SECTION 2. The courts of insolvency shall be courts of superior and general jurisdiction with reference to all cases and matters in which they have jurisdiction, and it shall not be necessary for any order, decree, sentence, warrant, writ or process which may be made, issued or pronounced by them, to set out any adjudication or circumstances with greater particularity than would be required in other courts of superior and general jurisdiction, and the like presumption shall be made in favor of proceedings of the probate court as would be made in favor of proceedings of other courts of superior and general jurisdiction.	1 2 3 4 5 6 7 8 9 10
Jurisdiction. 1856, 284, § 2. 1858, 193, § 10. G. S. 118, § 2. P. S. 157, § 2.	SECTION 3. Courts of insolvency shall have original jurisdiction in their respective counties of cases of insolvency under the provisions of this chapter.	1 2 3
Petitions filed in more than one county. 1893, 405, § 5.	SECTION 4. If a petition in insolvency is within the jurisdiction of more than one court of insolvency, the court in which it is first filed shall have exclusive jurisdiction thereof if a warrant is issued, and proceedings upon a petition filed in another county shall be stayed until the court in which the petition was first filed determines whether a warrant shall be issued.	1 2 3 4 5 6
Equity jurisdiction. 1894, 164, § 1. 167 Mass. 10.	SECTION 5. Courts of insolvency shall have jurisdiction in equity, concurrent with the supreme judicial court and the superior court, of all cases and matters pending in said courts of insolvency, and such jurisdiction may be exercised upon petition, according to the usual course of proceedings in courts of insolvency.	1 2 3 4 5
Enforcement of orders in equity. 1894, 164, § 2.	SECTION 6. Courts of insolvency shall have like power to enforce all orders, decrees and sentences made by them in the exercise of any authority or jurisdiction conferred upon them and to punish contempts of their authority as the supreme judicial court has in like cases.	1 2 3 4 5
Courts, where held. 1838, 163, § 15. 1844, 178, § 16. 1846, 168, § 2. 1856, 284, §§ 3, 13. 1858, 193, § 11. G. S. 118, §§ 3, 8. P. S. 157, §§ 3, 8. 1895, 215. 1901, 61. 7 Met. 431. 4 Cush. 584. 8 Gray, 193.	SECTION 7. Courts of insolvency shall be held at the shire towns of the county at times appointed by the court, and may be held at such other places as will best promote the convenience of the public. They shall always be open, except on the Lord's day and legal holidays, for all hearings, for matters in equity, for proceedings in contempt and for making orders and decrees in all matters before them; but the times of all hearings shall be discretionary with the judges of said courts. The judge or, in his absence or in case of a vacancy in that office, the register may adjourn any court or meeting from time to time as occasion requires, and all acts lawfully done at an adjourned meeting shall have like effect as if done at the original meeting.	1 2 3 4 5 6 7 8 9 10 11 12

1 SECTION 8. The judge may at any time approve compositions
2 and assignees' bonds, approve or order sales, receive petitions, issue
3 orders of notice and warrants and do such other official acts as are
4 done as matters of course and do not require notice.

Approval of
compositions,
etc.
1844, 178, § 2.
1856, 284, § 4.
G. S. 118, § 4.
P. S. 157, § 4.

1 SECTION 9. The judge may keep order in his court and punish
2 any contempt of his authority, administer oaths, issue commissions,
3 compel the attendance of witnesses and the giving of evidence in
4 like manner as the superior court: and may appoint such officers to
5 attend upon the court as are necessary to keep order therein and to
6 transact its business.

Contempt,
administering
of oaths, etc.
1838, 163, § 15.
1856, 284, §§ 7, 9.
G. S. 118, § 5.
P. S. 157, § 5.

1 SECTION 10. Proceedings in courts of insolvency shall be matters
2 of record, and the assignment and certificate of discharge shall be
3 recorded in full. Other proceedings need not be so recorded, but
4 shall be carefully numbered, filed and kept in the office of the regis-
5 ter. Copies of all parts of the records and of records of prior
6 proceedings in insolvency deposited in his office, certified by the
7 register, shall be prima facie evidence of the facts therein stated.

Proceedings
matters of
record. Evi-
dence.
1838, 163, § 14.
1858, 32.
G. S. 118, § 6.
P. S. 157, § 6.
6 Met. 518.
5 Cush. 615.
6 Cush. 185, 362.
3 Gray, 255.

4 Allen, 77.

99 Mass. 64.

130 Mass. 368.

1 SECTION 11. Each register shall keep a docket with an alpha-
2 betical index of all cases in the court of his county, in which he
3 shall enter every case by its appropriate title and number with brief
4 memoranda of all proceedings and papers filed therein. The docket,
5 and all books, records, documents and papers in his office relative to
6 insolvency shall at all reasonable times be open to the inspection of
7 the public. He shall make computations of dividends and orders
8 of distribution, and shall furnish to the assignee a certified copy of
9 the schedules of creditors and assets filed in each case, and of the
10 orders of distribution, and with each copy of an order of distribu-
11 tion a dividend sheet, without charge therefor. He may administer
12 all oaths required in proceedings before the court, except the oath
13 named in section eighty-eight.

Docket; duties
of register.
1854, 329, § 3.
1856, 284, § 13.
1858, 32, 141, § 5.
G. S. 118, §§ 7,
8, 10.
1855, 259, § 2.
P. S. 157, §§ 7-9.

1 SECTION 12. Assignments, warrants, orders of notice and other
2 processes issued by the court shall be under the seal thereof, and
3 shall be executed and obeyed throughout the commonwealth; and
4 any officer or other person to whom they are legally directed may
5 serve them in any county. Warrants shall be returnable not less
6 than ten nor more than sixty days from the date of their issue.

Warrants, etc.,
when return-
able, etc.
1848, 304, § 6.
1856, 284, § 6.
G. S. 118, § 11.
P. S. 157, § 10.

1 SECTION 13. Parties to insolvency proceedings may select the
2 newspapers in which notices which may be ordered upon their peti-
3 tions shall be published, but the court may order the notice to be
4 published in one other newspaper.

Selection of
newspapers
for notices.
1851, 138.
G. S. 118, § 12.
P. S. 157, § 11.

1 SECTION 14. Each county shall provide suitable court rooms
2 and, in the city or town in which the registry of probate and insol-
3 vency is situated, a suitable fireproof room in which the records,
4 books, documents and papers relative to the business of the court
5 and the records in cases in insolvency shall be kept.

Counties to
provide court
rooms, etc.
1856, 284, § 3.
G. S. 118, § 13.
P. S. 157, § 12.

Expenses.
1856, 284, § 23.
G. S. 118, § 14.
P. S. 157, § 13.

SECTION 15. Expenses attending the sessions of the courts and the transaction of business therein, for blank books for records and for blank forms and stationery necessary for the business of the courts shall be paid by the commonwealth. 1
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Rules, etc.
1838, 163, § 18.
1851, 327, § 16.
1856, 284, § 10.

SECTION 16. The judges or a majority of them shall, as provided in section twenty-nine of chapter one hundred and sixty-two, from time to time make rules and prescribe forms for their courts. 1
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G. S. 118, §§ 15, 16.

P. S. 157, §§ 14, 15.

1893, 372, § 1.

Jurisdiction of supreme judicial court.
1838, 163, § 18.
1851, 327, § 16.
G. S. 118, § 16.
P. S. 157, § 15.
1894, 164, § 4.
4 Met. 504.
2 Cush. 294.
4 Cush. 270.
7 Cush. 183.

SECTION 17. The supreme judicial court shall have general superintendence and jurisdiction of cases arising under the provisions of this chapter : and, except as otherwise provided, may, upon the bill, petition or other proper process of a party aggrieved, hear and determine the case as a court of equity. 1
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8 Gray, 316.
9 Gray, 355.
16 Gray, 137.
5 Allen, 530.

6 Allen, 118, 560.
7 Allen, 112.
107 Mass. 79.
132 Mass. 465.

139 Mass. 84.
145 Mass. 444.
150 Mass. 574.
157 Mass. 252.

165 Mass. 582.
166 Mass. 379.
168 Mass. 100, 103.
171 Mass. 239.

Rules as to notice.
1890, 420, § 2.

SECTION 18. The supreme judicial court and the courts of insolvency shall make rules requiring notice to be given to the parties interested or their attorney who has entered his appearance of any motion, hearing or other proceeding before said courts. 1
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Appearance by attorney.
1838, 163, § 15.
G. S. 118, § 33.
P. S. 157, § 34.
1890, 420, § 1.

SECTION 19. A duly authorized attorney at law may enter his appearance as attorney for the party represented by him in any proceeding in a court of insolvency and may act for him at all meetings. Processes and notices served upon such attorney shall have like effect as if served upon the party whom he represents. 1
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PETITION BY DEBTOR. FIRST MEETING.

Petition.
1838, 163, § 1.
1855, 363.
1858, 93, § 10.
G. S. 118, § 17.
1881, 233.
P. S. 157, § 16.
1893, 405, § 1.
1 Cush. 531.
4 Allen, 170.
6 Allen, 118.
138 Mass. 372.

SECTION 20. An inhabitant of this commonwealth owing debts, contracted while such inhabitant, may file a petition in the court of insolvency for the county, if any, in which he has last resided or had a usual place of business for three consecutive months, otherwise in the court for the county in which he resides or has a usual place of business, stating his inability to pay his debts and his willingness to assign his property for the benefit of his creditors, and praying that such proceedings may be had as are provided in this chapter. 1
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Warrant to messenger.
1838, 163, §§ 1, 2.
1841, 124, § 1.
1844, 178, § 10.
1846, 168, § 4.
1848, 304, § 6.
1850, 319.
1854, 329, § 4.
G. S. 118, § 18.
1879, 107.
P. S. 157, § 17.
7 Cush. 136.
165 Mass. 317.

SECTION 21. If it appears to the satisfaction of the judge that the debts due from the petitioner amount to two hundred dollars or more, he shall forthwith sign and issue a warrant to the sheriff of the county or one of his deputies ordering him forthwith as messenger to take possession of all the property of the debtor not exempt from attachment, and of all his deeds, books of account and papers, and keep the same safely until the appointment of an assignee ; to publish notice in such newspaper or newspapers as the warrant specifies, send written notice by mail or otherwise to all creditors upon the schedule furnished him by the debtor and to give such personal or other notice to any persons concerned as the warrant orders. Such notice shall state that a warrant has issued against the prop- 1
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erty of the debtor: that the payment of any debts and the delivery of any property belonging to such debtor, to him or for his use, and the transfer of any property by him are forbidden by law; that a meeting of the creditors of the debtor to prove their debts and choose one or more assignees of his property will be held at a court of insolvency to be held at a time and place designated in the warrant, not less than ten nor more than sixty days after the date of its issue.

SECTION 22. The messenger shall forthwith demand and receive from the debtor and other persons all the property in his or their possession, which is herein ordered to be assigned, with all the deeds, books of account and papers of the debtor relative thereto.

2 Cush. 48.

8 Allen, 131.

148 Mass. 69.

Messenger to receive property.
1838, 163, § 6.
G. S. 118, § 19.
P. S. 157, § 18.
12 Met. 464.

SECTION 23. Upon demand by the messenger under the provisions of the preceding section, the debtor shall forthwith deliver to him such of the property and other things demanded as is in his possession or power, and shall disclose the situation of such portion thereof as is in the possession of any other person. The debtor shall also, except as provided in the following section, within three days after the date of the warrant make on oath and deliver to the messenger a schedule, containing a full and true account of his creditors, with the residence of each, if known to the debtor, and the amount due to each, and the nature of each debt, whether founded on written security, account or otherwise, and also the true cause and consideration thereof, and a statement of any existing mortgage, pledge or other collateral security given for the payment of the same.

Delivery of property and schedule by debtor.
1838, 163, § 6.
1848, 304, § 8.
G. S. 118, § 20.
1862, 179, § 1.
P. S. 157, § 19.
8 Met. 75.
137 Mass. 224

SECTION 24. If by accident or mistake such schedule is not delivered to the messenger within said three days it shall be so delivered within such time thereafter as will enable the messenger to comply with the terms of the warrant, and such delay shall not affect the granting of a certificate of discharge unless caused by the default of the debtor.

Late schedule.
1886, 290.

SECTION 25. If the court finds that the property of the debtor or any part thereof is perishable or likely to deteriorate in value before an assignee can be appointed, it may order the same to be sold in such manner as it orders under the direction of the messenger who shall hold the funds received in place of the property sold.

Sale of perishable property.
1848, 304, § 15.
G. S. 118, § 21.
P. S. 157, § 20.

SECTION 26. After a warrant has issued against the estate of an insolvent debtor and before the appointment of an assignee, the judge may at any time order the messenger to commence an action for the recovery of a debt due to the debtor or do any other act which might be done by an assignee. The messenger shall thereupon in his own name commence and prosecute such action or do any other act so ordered as if he were assignee. If, upon the appointment of the assignee, an action or proceeding commenced by the messenger has not been determined, the assignee may in his own name or in the name of the messenger with his consent prosecute it or otherwise proceed.

Messenger to commence action by order of court.
1862, 179, § 2.
P. S. 157, § 21.

Delivery of
schedule of
creditors, etc.,
by debtor to
register.
1838, 163, § 6.
1841, 124, § 2.
1854, 329, § 3.
G. S. 118, § 22.
1862, 179, § 1.
P. S. 157, § 22.

SECTION 27. The debtor shall, except as provided in the following section, within five days after the date of the warrant make on oath and deliver to the register a schedule of his creditors as provided in section twenty-three, and a schedule of all his property, with a description thereof, stating where it is situated, and all encumbrances thereon, with the date of each and the consideration thereof.

Late
schedules.
1863, 71.
P. S. 157, § 23.

SECTION 28. If by accident or mistake such schedules are not delivered to the register within said five days they shall be so delivered before or at the first meeting of the creditors and such delay shall not affect the granting of a certificate of discharge unless caused by the default of the debtor.

First meeting.
1838, 163, § 6.
1841, 124, § 2.
1848, 304, § 1.
1854, 329, § 3.
G. S. 118, §§ 22,
23.
P. S. 157, § 24.

SECTION 29. At the meeting held in pursuance of the notice, the messenger shall make return of the warrant and his doings thereon, and deliver to the register the schedule of creditors received from the debtor. If the court finds that the notice to the creditors required by the provisions of section twenty-one has not been given, it shall forthwith adjourn the meeting and order such notice.

Death of
debtor.

1838, 163, § 5.
G. S. 118, § 24.
P. S. 157, § 25.

SECTION 30. If the debtor dies after the warrant has been issued, the proceedings shall be concluded in like manner and with like effect as if he had lived.

DEBTS AND PROOF OF CLAIMS.

Claims
provable.
1838, 163, §§ 2,
3, 7, 12, 13.
G. S. 118, § 25.
P. S. 157, § 26.
7 Met. 348, 424.
6 Cush. 537.
7 Cush. 592.
5 Gray, 574.
10 Gray, 600.
15 Gray, 274.
3 Allen, 22, 64.
5 Allen, 163.
13 Allen, 294.
134 Mass. 69.
138 Mass. 111.
144 Mass. 109.
152 Mass. 596.
156 Mass. 515.
157 Mass. 33.
166 Mass. 379.
174 Mass. 475.
177 Mass. 224.

SECTION 31. Debts due and payable from the debtor at the time of the first publication of the notice of issuing the warrant may be proved and allowed against his estate at any meeting; and debts at that time absolutely due, although not payable, may be proved and allowed as if payable, with a discount or rebate of interest if no interest is payable by the contract. Money due on a bottomry or respondentia bond or policy of insurance may be proved and allowed, if the contingency or loss happens before the making of the first dividend, in like manner as if the same had happened before the first publication of the notice. If the debtor is liable for a debt in consequence of having made or indorsed a bill of exchange or promissory note before said first publication, or in consequence of the payment by a party to a bill or note of a part of the money secured thereby, or of the payment of an amount by a surety of the debtor in a contract, if the payment is made before the making of the first dividend, such debt may be proved and allowed as if it had been due and payable by the debtor before the first publication. All demands against the debtor for or on account of goods or chattels wrongfully obtained, taken or withheld by him, may be proved and allowed as debts, to the amount of the value thereof.

Equitable
claims.
1884, 263.
8 Allen, 581.
141 Mass. 283.

SECTION 32. An equitable liability of an insolvent debtor may be proved and allowed against his estate in like manner and subject to like conditions as a legal claim.

1 SECTION 33. If any of the property of a debtor consists of a
 2 lease or agreement in writing, whereby he is liable for the rent
 3 therein reserved or for the use and occupation of premises as therein
 4 stipulated, the assignee at any time may, and upon request in writ-
 5 ing by the debtor, or by the lessor or those having his estate in the
 6 premises shall, within twenty days after such request, by a writing
 7 filed in the case, elect to accept and hold under said lease or agree-
 8 ment or to disclaim it. If he elects to disclaim, such lease or
 9 agreement in writing shall thereupon be considered to have been
 10 surrendered as of the day on which said disclaimer was so filed. If
 11 the debtor obtains his discharge in insolvency, he shall be discharged
 12 from all liability under or by reason of said lease or agreement,
 13 whether the assignee does or does not disclaim the same as afore-
 14 said; and the lessor or those having his estate in the premises may
 15 prove such damages, if any, as are caused by such surrender, as a
 16 debt against the estate of the debtor; but the provisions of this
 17 section shall not apply to leases or agreements in writing as afore-
 18 said in force on the twenty-second day of April in the year eighteen
 19 hundred and seventy-nine.

Leases, etc.
 1879, 245, § 1.
 P. S. 157, § 26.
 139 Mass. 168.
 146 Mass. 109.

1 SECTION 34. Mutual credit or mutual debts between the debtor
 2 and a creditor shall be set off one against the other and the balance
 3 allowed or paid.

5 Cush. 194.	4 Gray, 284.	7 Gray, 425.
3 Allen, 111.	4 Allen, 368.	131 Mass. 14.
		138 Mass. 330.

Set-off.
 1838, 163, § 3.
 G. S. 118, § 26.
 P. S. 157, § 27.
 6 Met. 537.
 10 Met. 134.

1 SECTION 35. The assignee, by an assignment in writing of a
 2 non-negotiable legal chose in action, may prove a claim in insol-
 3 vency, in his own name, subject to all defences and rights of counter-
 4 claim, reconpment or set-off to which the debtor would have been
 5 entitled if the claim had been proved in the name of the assignor.

Proof of claim
 by assignee
 thereof.
 1897, 402.

1 SECTION 36. A creditor who has a mortgage or pledge of prop-
 2 erty of the debtor, or a lien thereon, to secure the payment of a
 3 debt claimed by him, may require such property to be sold, and
 4 the proceeds applied toward the payment of his debt, and he shall
 5 be admitted as a creditor for the residue. The sale shall be made
 6 in such manner as the court orders and the creditor and assignee
 7 shall execute necessary and proper deeds and papers. If the cred-
 8 itor does not require such sale and join in the conveyance, he may
 9 release and deliver to the assignee the property held as security,
 10 and be admitted as a creditor for the whole of his debt. If the
 11 property is not so sold or released and delivered the creditor shall
 12 not prove any part of his debt.

Mortgage,
 pledge or lien.
 1838, 163, § 3.
 G. S. 118, § 27.
 P. S. 157, § 28.
 3 Cush. 469.
 4 Cush. 99.
 6 Gray, 523.
 11 Gray, 134,
 261.
 15 Gray, 381.
 130 Mass. 132.
 133 Mass. 71,
 534.
 134 Mass. 291.
 137 Mass. 412.
 138 Mass. 515.
 143 Mass. 376,
 455.

150 Mass. 317.	175 Mass. 547.
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1 SECTION 37. A mortgage of land recorded more than four
 2 months after its date shall not be valid against an assignee of the
 3 estate of the mortgagor if proceedings in insolvency are commenced
 4 within one year from the recording of such mortgage.

163 Mass. 85.	172 Mass. 384.
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Mortgage
 recorded more
 than four
 months after
 date.
 1888, 303.

1 SECTION 38. A mortgage or pledge of property, or payment of
 2 money given or made by an insolvent debtor for legal services ren-
 3 dered or to be rendered in, or in contemplation of, insolvency
 4 proceedings, shall be valid for such amount as the court allows.

Allowance for
 legal services.
 1889, 420.
 150 Mass. 343.

An appeal from the decision of said court shall be allowed in the manner provided in section forty-five. 5 6

Claims to be proved on oath.

1838, 163, § 4.
1848, 304, § 14.
1851, 189, § 1;
349, § 1.
1852, 189, §§ 1, 2.
1856, 284, § 33.
G. S. 118, § 28.
P. S. 157, § 29.
8 Allen, 581.
147 Mass. 122.

SECTION 39. No debt shall be proved or allowed unless the creditor, or, if he resides in a foreign country and the debt is founded on a contract made by the debtor with the consignee or agent of the creditor residing in the United States, such consignee or agent makes oath in substance as follows:— 1 2 3 4 5

I, , do swear that , of , by (or against) whom proceedings in insolvency have been instituted, at and before the date of such proceedings was and still is justly and truly indebted to me in the sum of , for which sum or any part thereof I have not, nor has any other person to my use, to my knowledge or belief, received any security or satisfaction whatever, beyond what has been disposed of agreeably to law. And I do further swear that said claim was not procured by me for the purpose of influencing the proceedings in this case. And I do further swear that I have not directly or indirectly made or entered into any bargain, arrangement or agreement, express or implied, to sell, transfer or dispose of my claim, or any part of my claim, against said debtor, nor have directly or indirectly received or taken, or made or entered into any bargain, arrangement, or agreement, express or implied, to take or receive directly or indirectly any money, property, or consideration whatsoever to myself, or to any person or persons to my use or benefit, under or with any understanding or agreement, express or implied, whereby my vote for assignee or my assent to the debtor's discharge is or shall be in any way affected, influenced, or controlled, or whereby the proceedings in this case are or shall be affected, influenced or controlled.

No claim shall be allowed unless all the statements set forth in the oath are true. 6 7

Oath by attorney.

1852, 189, §§ 1, 2.
G. S. 118, § 29.
P. S. 157, § 30.

SECTION 40. If the creditor is disabled by absence from the commonwealth, illness or other cause from proving his claim, the above oath may be made by his agent or attorney testifying to the best of his knowledge and belief; but the court may require further proof of the truth of the statements therein. 1 2 3 4 5

Before whom oath may be made.

1838, 163, § 4.
1858, 493, § 9.
G. S. 118, § 30.
1879, 245, § 2.
1880, 246, § 1.
P. S. 157, § 31.
1899, 178, § 4.
3 Gray, 113.

SECTION 41. The oath may be made within the commonwealth before a justice of the peace, notary public or special commissioner and, without the commonwealth, before a justice of the peace, notary public or commissioner for Massachusetts, and, if the creditor is in a foreign country, before an ambassador, minister, consul or vice-consul of the United States. But the court may at any time require the affiant to appear personally before it to be further interrogated on oath. The debtor and any party proving a debt may be examined on oath in presence of the judge on all matters relative thereto. 1 2 3 4 5 6 7 8 9 10

Postponement of claims.

1856, 284, § 33.
G. S. 118, § 31.
P. S. 157, § 32.
165 Mass. 582.

SECTION 42. If a claim is presented for proof before the election of an assignee, and the court is of opinion that the validity or right of such claim ought to be investigated by the assignee, it may postpone the proof of the claim till after the assignee is chosen. 1 2 3 4

Claims not to be allowed.

1838, 163, § 10.
1856, 284, § 32.
G. S. 118, § 32.
P. S. 157, § 33.
172 Mass. 227.
177 Mass. 257.

SECTION 43. A person who has accepted a preference, having reasonable cause to believe that it was made or given by the debtor contrary to any provision of this chapter, shall not prove the debt or claim on account of which such preference was made or given, nor receive a dividend thereon. 1 2 3 4 5

1 SECTION 44. The court shall allow all debts proved and shall
2 cause a list thereof to be made and certified by the register. It
3 may upon application by the assignee, a creditor, or the debtor,
4 examine upon oath any person who has made proof of a claim and
5 may summon any person to give evidence relative to such proof,
6 and may alter or expunge such claim if the evidence shows that it
7 is founded in whole or in part in fraud, illegality or mistake.

Allowance and
expunging of
claims.
1838, 163, § 2.
G. S. 118, § 33.
1880, 246, § 9.
P. S. 157, §§ 34,
35.
138 Mass. 592.
145 Mass. 444.
465 Mass. 587.

1 SECTION 45. A supposed creditor whose claim is wholly or in
2 part rejected or an assignee who is dissatisfied with the allowance
3 of a claim may appeal from the decision to the superior court; but
4 no appeal shall be allowed unless it is claimed and notice thereof
5 given to the register, to be entered with the record of the proceed-
6 ings, and also to the assignee or creditor, as the case may be, within
7 ten days after the decision appealed from. The appeal shall be
8 entered at the return day of the superior court for the county next
9 after the expiration of fourteen days from the time of claiming
10 it. If the appellant in writing waives his appeal before the entry
11 thereof, proceedings may be had in the court of insolvency as if no
12 appeal had been taken.

Appeal.
1838, 163, § 4.
G. S. 118, § 34.
P. S. 157, § 36.
1885, 384, § 5.
2 Cush. 371.
4 Cush. 270.
5 Cush. 615.
6 Cush. 28.
11 Gray, 184.
1 Allen, 403.
138 Mass. 592.
141 Mass. 509.
163 Mass. 26.
245.
165 Mass. 587.

1 SECTION 46. Upon the entry of an appeal the appellant shall
2 file in court a statement of his claim substantially as in a declara-
3 tion at law. The subsequent pleadings and proceedings shall be
4 substantially as in an action at law, except that no execution shall
5 be awarded against the assignee for the amount of a debt found due
6 to the creditor.

Proceedings.
1838, 163, § 4.
G. S. 118, § 35.
P. S. 157, § 37.
168 Mass. 514.

1 SECTION 47. The final judgment of the court shall be conclusive,
2 and the lists of debts shall, if necessary, be altered to conform
3 thereto. The prevailing party shall be entitled to costs, to be
4 taxed and recovered as in an action at law; if recovered against
5 the assignee, they shall be allowed out of the estate.

Judgment on
appeal. Costs.
1838, 163, § 4.
G. S. 118, § 36.
P. S. 157, § 38.
7 Met. 85.

1 SECTION 48. A bill of exchange, promissory note or other in-
2 strument used as evidence upon the proof of a claim and left in
3 court or deposited in the registry may be delivered by the register
4 to the person who used it, upon his filing a copy thereof attested
5 by the register, who shall also indorse upon it the name of the
6 party against whose estate it has been proved and the date and
7 amount of any dividend declared thereon.

Evidence of
withdrawal
of claim.
1852, 189, § 3.
G. S. 118, § 37.
P. S. 157, § 39.

ASSIGNMENT AND ASSIGNEE.

1 SECTION 49. The creditors shall, subject to the approval of the
2 court, choose one or more assignees of the estate of the debtor in
3 the presence of the court at the first meeting. The choice shall be
4 made by a majority in value of the creditors who have proved their
5 debts; but if the number of creditors present amounts to five and
6 less than ten, the votes of two at least, and, if the number of cred-
7 itors amounts to ten or more, the votes of three at least, shall be
8 necessary for a choice, and no creditor having a preferred claim
9 shall vote thereon, except on so much of said claim as exceeds the
10 amount preferred by law. If no choice is made by the creditors at

Choice of
assignee.
1838, 163, § 3.
1858, 141, § 1.
G. S. 118, §§ 38,
39.
1862, 179, § 3.
1879, 95, § 2.
P. S. 157, §§ 40,
41.

said meeting, the court shall appoint one or more assignees. If an assignee so chosen or appointed fails within four days to accept in writing the trust, the court may fill the vacancy. The court may appoint additional assignees or order a new election, or it may at the first meeting without an election appoint one or more disinterested assignees.

Bond of assignee.
1844, 178, § 11.
1853, 116.
G. S. 118, §§ 40, 41.
1862, 179, § 4.
1879, 245, § 9.
P. S. 157, §§ 42, 43.
4 Gray, 286.
6 Gray, 364.

SECTION 50. The court at any time may, and, upon request in writing by one-fourth in number and value of the creditors who have proved their claims, shall, require the assignee to file a bond, approved by the judge, to the judge and his successors in office, conditioned for the faithful performance of his duties, which shall inure to the benefit of all creditors proving their claims and may be prosecuted in like manner as an administration bond. An assignee who fails to give a bond within such time as the court orders, not exceeding ten days after notice to him of such order, shall be removed and another appointed by the court.

Assignment by judge.
1838, 163, § 5.
G. S. 118, § 42.
P. S. 157, § 44.
97 Mass. 253.
153 Mass. 311.

SECTION 51. The judge shall, by an instrument under his hand, assign and convey to the assignee all the property of the debtor, not exempt from attachment, and all his deeds, books and papers relative thereto.

Record of assignment and notice.
1838, 163, § 11.
G. S. 118, § 43.
P. S. 157, § 45.
5 Allen, 126.
130 Mass. 368.

SECTION 52. The assignee shall forthwith cause the assignment to be recorded in the registry of deeds in each county or district in which there is land of the debtor upon which it may operate: and shall give such public notice of his appointment as the judge may order.

Agent of non-resident assignee.
1889, 313.
1893, 118.

SECTION 53. An assignee appointed in, but residing out of, this commonwealth shall not receive the instrument of assignment until he shall have appointed an agent as provided in sections eight to ten, inclusive, of chapter one hundred and thirty-nine, and the provisions of said sections shall apply to such appointment except that said writing shall be filed in the registry of insolvency. Notice of a new appointment of an agent, with his name and address, shall be given in the next notice required to be given by the assignee, or as the court may order.

Effect of assignment.
1838, 163, § 5.
1851, 327, § 20.
G. S. 118, §§ 44, 123.
1862, 179, § 7.
1879, 245, § 3.
1880, 246, § 7.
P. S. 157, § 46.
4 Met. 346, 537.
8 Met. 19.
9 Met. 23.
4 Cush. 357.
3 Gray, 247.
7 Gray, 539.
9 Gray, 42.
1 Allen, 373.
5 Allen, 126.
382, 582.
8 Allen, 20, 598.
10 Allen, 258, 460.
12 Allen, 345.
95 Mass. 305.

SECTION 54. The assignment shall vest in the assignee all the property of the debtor, not exempt from being taken on execution, which he could have lawfully sold, assigned or conveyed at the time of the first publication of the notice of issuing the warrant in case of voluntary proceedings, and at the time of the first publication of notice of the filing of the petition in case of involuntary proceedings, and shall, subject to the provisions of the following section, dissolve any attachment on mesne process made not more than four months prior to the time of said first publication. The assignment shall vest in the assignee all debts due to the debtor or a person for his use, and all liens and securities therefor, and all his rights of action for, and of redeeming, property. The assignee may redeem all mortgages, conditional contracts, pledges and liens of or upon any property of the debtor, or sell it subject to such mortgage or

15 other encumbrance, and if a mortgage is foreclosed pending pro-
16 ceedings in insolvency and before, or within sixty days after, the ap-
17 pointment of an assignee the assignee may redeem the same within
18 sixty days after his appointment, with remedies similar to those pro-
19 vided for the redemption of mortgages before foreclosure.

149 Mass. 158, 310.
153 Mass. 311.

154 Mass. 302.
159 Mass. 420.

163 Mass. 350, 530.
172 Mass. 384.

146 U. S. 303.
175 U. S. 396.

100 Mass. 446,
453.
102 Mass. 475.
134 Mass. 247.
139 Mass. 33, 84.
140 Mass. 169.
144 Mass. 168,
207, 281.
147 Mass. 8.

1 SECTION 55. If a debtor whose property is attached conveys
2 before judgment in the action any part of such property, and sub-
3 sequently thereto and before execution issues, proceedings are com-
4 menced by or against him as an insolvent debtor, or if a dissolution
5 of an attachment under the provisions of the preceding section
6 might prevent the property attached from passing to the assignee,
7 the court in which proceedings in insolvency are pending or to
8 which the writ of attachment is returnable, may, upon application
9 on or before the day of the third meeting of creditors by a person
10 interested, for cause, order the lien created by the attachment to
11 continue. The action may be continued or execution stayed until
12 the assignee is chosen and takes charge of the action. The assignee
13 may proceed with the action and levy the execution at the expense
14 of the estate; and the amount recovered, exclusive of costs due to
15 the original plaintiff, shall vest in the assignee.

Attachments,
how preserved.
1841, 124, § 5.
1855, 66.
1857, 247.
G. S. 118, § 45.
P. S. 157, § 47.
4 Met. 470.
13 Met. 200.
2 Cush. 124.
4 Gray, 429.
6 Gray, 523.
5 Allen, 452.
133 Mass. 435,
524.
157 Mass. 390,
483.
156 Mass. 147.

1 SECTION 56. The assignee shall demand and receive from the
2 messenger and all other persons all the property in his or their
3 possession assigned or intended to be assigned under the provisions
4 of this chapter; and shall keep a regular account of all money re-
5 ceived by him as assignee, to which every creditor shall at reason-
6 able times have free access.

Assignee to
demand and
receive prop-
erty and keep
accounts.
1838, 113, § 11.
G. S. 118, § 46.
P. S. 157, § 48.

1 SECTION 57. The assignee shall, unless the court otherwise
2 orders, at or before the second meeting of the creditors, make and
3 return upon oath to the court of insolvency a true inventory of all
4 the property of the debtor, of all debts due to the debtor or an-
5 other person for his use, of all his rights of action for and of redeem-
6 ing property, which the assignment has vested in such assignee
7 and which have come to his possession or knowledge. The property
8 included in such inventory shall be appraised in like manner as
9 the estate of a deceased person, and the appraisal returned at or be-
10 fore said meeting.

Inventory.
1861, 104, § 1.
P. S. 157, § 49.

1 SECTION 58. The assignee shall account for the property of the
2 debtor which has vested in him by the assignment, at the appraised
3 value, except as herein provided. He shall make no profit by the
4 increase and sustain no loss by the decrease or destruction, with-
5 out his fault, of any part of the property; if he sells any thereof
6 for more than the appraised value, he shall account for the excess,
7 but if he sells for less, the court may, if it appears that the sale
8 was expedient and for the interest of all concerned in the estate,
9 allow him for the loss. In either case the assignee shall return to
10 the court a true account of sales, and shall sell the property at
11 public auction unless the court, upon petition therefor, otherwise
12 orders.

Assignee to
account for
property at ap-
praised value.
1861, 104, § 2.
P. S. 157, § 50.
10 Cush. 173.
98 Mass. 305.
116 Mass. 590.
154 Mass. 51.

Assignee
to commence
and prosecute
actions, etc.
1838, 163, § 5.
G. S. 118, § 47.
P. S. 157, § 51.
1 Gray, 416.
10 Gray, 329.
5 Allen, 582.
10 Allen, 36, 460.
130 Mass. 368.
148 Mass. 299.
157 Mass. 468.
163 Mass. 350.

SECTION 59. He may recover all the property and debts, in his own name, as the debtor might have done had no assignment been made. If at the date of the assignment an action is pending in the name of the debtor for the recovery of a debt or other thing which might or ought to pass to the assignee by the assignment, the assignee shall, if he so requires, be admitted to prosecute the action in his own name, in like manner and with like effect as if commenced by him. No action pending in the name of the assignee shall be abated by his death or removal: but the surviving, remaining or new assignee, as the case may be, shall be admitted to prosecute the action. The assignment by the judge shall be conclusive evidence of the authority of an assignee to sue.

Limitation of
actions.
1895, 432.
7 Met. 348.

SECTION 60. An assignee shall not commence or be made a party to an action or other proceeding at law or in equity relative to any property or rights thereto unless the same is commenced within six years from the time when the right accrued to or against the insolvent. The provisions of section nine of chapter two hundred and two shall apply to such actions and proceedings.

Drafts, etc., as-
signed within
six months, not
to be offset.
1856, 284, § 28.
G. S. 118, § 48.
P. S. 157, § 52.
8 Gray, 572.

SECTION 61. A draft, bill of exchange, promissory note, claim, demand or other cause of action, which within six months before the filing of the petition by or against a debtor has been assigned, transferred, conveyed or delivered to a person indebted or liable to the debtor shall not be set off or pleaded in defence in an action by the assignee to recover such debt or liability; but the assignee may recover the same, notwithstanding such draft, bill of exchange, promissory note, claim, demand or cause of action, if the person to whom it has been so assigned, transferred, conveyed or delivered had at the time of such assignment, transfer, conveyance or delivery reasonable cause to believe the debtor insolvent.

Property to be
kept separate
by assignee.
1838, 163, § 11.
G. S. 118, § 49.
P. S. 157, § 53.

SECTION 62. The assignee shall, as soon as may be after receiving any money belonging to the estate, deposit it in a bank in his name as assignee, or otherwise keep it distinct and apart from all other money in his possession; and shall as far as practicable keep all other property of the estate separate and apart from all other property in his possession, or designated by appropriate marks, so that it may be easily and clearly distinguished and not be exposed or liable to be taken as his property or for the payment of his debts.

Temporary
investment of
property,
when.
1859, 119.
G. S. 118, § 50.
P. S. 157, § 54.

SECTION 63. If the court finds that the distribution of the estate may be delayed by litigation or other cause it may order the temporary investment of the money of such estate in securities approved by the judge, or may authorize its deposit in a bank in this commonwealth upon such interest as the bank may contract with the assignee to pay thereon.

Carrying on
of business.
1897, 120.

SECTION 64. The court may for cause order the messenger or assignee to carry on the business of the debtor or any part thereof under its direction.

1 SECTION 65. The assignee shall give written notice to all known
 2 creditors by mail or otherwise of all dividends, and such notice of
 3 meetings after the first as the judge orders. G. S. 118, § 51. P. S. 157, § 55.

Notice of dividends and meetings.
 1846, 168, § 4.
 1850, 319.

1 SECTION 66. He shall be allowed by the court from the money
 2 in his hands the necessary disbursements made by him in the per-
 3 formance of his duty, and a reasonable compensation for his services.

Compensation of assignee.
 1838, 163, § 11.
 G. S. 118, § 52.
 P. S. 157, § 56.

1 SECTION 67. He may, under the direction of the court submit
 2 any controversy which arises in the settlement of claims by or
 3 against the estate to the determination of arbitrators who shall be
 4 chosen by him and the adverse party; and may under such direc-
 5 tion compromise and settle any such controversy if in his judgment
 6 it is proper and for the interest of the creditors.

Submission to arbitration.
 1838, 163, § 11.
 G. S. 118, § 53.
 P. S. 157, § 57.
 11 Cush. 582.

1 SECTION 68. If the court finds that the title to any property of
 2 the estate which has come into possession of the assignee is in
 3 dispute and that the property is perishable or liable to deteriorate
 4 in value, it may, upon petition by the assignee and notice to the
 5 claimant, his agent or attorney, order it to be sold under the direc-
 6 tion of the assignee, who shall hold the proceeds in place of the
 7 property sold; and such proceeds shall be the measure of the value
 8 of the property in an action or controversy between the parties.
 9 But the provisions of this section shall not prevent the recovery of
 10 the property from the possession of the assignee by action of re-
 11 plevin commenced at any time before the court orders the sale.

Sale of perishable property pending dispute of title.
 1838, 73.
 G. S. 118, § 54.
 P. S. 157, § 58.

1 SECTION 69. When an assignee has received from the estate
 2 assets sufficient to pay fifty per cent of the debts and claims proved
 3 against it, he shall certify the fact and render his accounts therefor
 4 to the court; and when he has received twenty-five per cent more
 5 from the assets, he shall in like manner certify and render his ac-
 6 counts therefor. He shall also certify and render his accounts when
 7 required by the court.

Accounts.
 1844, 178, § 7.
 G. S. 118, § 55.
 P. S. 157, § 59.

1 SECTION 70. At a meeting called by order of the judge in his
 2 discretion for the purpose, and which shall be called upon the
 3 petition of a majority of the creditors in number or value, the
 4 creditors may, with the consent of the court, remove an assignee by
 5 such vote as is provided in section forty-nine for the choice of
 6 assignee.

Removal of assignee by creditors.
 1838, 163, § 11.
 1850, 69.
 G. S. 118, § 56.
 P. S. 157, § 60.
 9 Cush. 382.

1 SECTION 71. If the court, upon complaint of any person inter-
 2 ested in the estate, after notice and a hearing, finds that an assignee
 3 has fraudulently received, concealed, embezzled or conveyed away
 4 any of the money or other property of the estate or has been inter-
 5 ested in an action at law relative to said estate for the purpose of
 6 securing to himself a preference or priority over the other creditors,
 7 or has in his possession or control any part of the estate with intent
 8 to appropriate the same unlawfully to his own use, or has been
 9 guilty of a fraudulent act relative thereto it may remove him.

— by court upon complaint.
 1848, 304, § 12.
 G. S. 118, § 57.
 P. S. 157, § 61.
 12 Gray, 144.

1 SECTION 72. The court may also remove an assignee who, having
 2 removed from the commonwealth, unreasonably refuses or neglects

Other grounds of removal.
 1851, 348, § 2.

1858, 141, § 1. G. S. 118, § 58. P. S. 157, § 62.	to obey a lawful order for calling meetings of the creditors, to settle his accounts, or otherwise to perform his duties; and for any other sufficient cause.	3 4 5
Resignation of assignee. 1858, 141, § 3. G. S. 118, § 59.	SECTION 73. An assignee may with the consent of the court resign his trust and be discharged therefrom. P. S. 157, § 63.	1 2
Filling of vacancies. 1838, 163, §§ 2, 11. 1858, 141, §§ 2, 3. G. S. 118, § 60. P. S. 157, § 64. 9 Allen, 197, 199.	SECTION 74. Vacancies caused by death or otherwise in the office of assignee may be filled by the court or in its discretion by an election by the creditors as provided in section forty-nine at a regular meeting or at a meeting called for the purpose, after notice thereof in writing to all known creditors by such person as the court orders.	1 2 3 4 5 6
Effect of resignation, etc. 1858, 141, § 3. G. S. 118, § 61. P. S. 157, § 65.	SECTION 75. The resignation or removal of an assignee shall not release him from performing all things required of him for the proper closing up of his trust and the transmission thereof to his successors, nor affect his liability or that of his surety on his bond.	1 2 3 4
Vesting of estate upon death, etc. 1838, 163, § 11. 1848, 304, § 12. 1851, 349, § 2. G. S. 118, § 62. P. S. 157, § 66.	SECTION 76. If by death or otherwise the number of assignees is reduced, the estate of the debtor not lawfully disposed of shall vest in the remaining assignee or assignees and the persons selected to fill vacancies, with the same powers and duties relative thereto as if they had been originally chosen.	1 2 3 4 5
Former assignee to execute deeds, etc. 1838, 163, § 11. 1851, 349, § 2. 1858, 141, § 4. G. S. 118, § 63. P. S. 157, § 67.	SECTION 77. A former assignee, his executor or administrator, upon request and at the expense of the estate, shall make and execute to the new assignee all deeds, conveyances and assurances, and do all other lawful acts, necessary to enable him to recover and receive all the estate; and the court may pass orders to secure performance of the duties of a former assignee, and the rights and interests of all persons interested in the estate.	1 2 3 4 5 6 7
Preferred creditors not to vote for, etc. 1856, 284, § 34. G. S. 118, § 64. P. S. 157, § 68.	SECTION 78. No person who has received a preference contrary to the provisions of this chapter shall vote or be eligible as assignee; but no title to property, sold, transferred or conveyed by an assignee shall be affected by reason of his ineligibility.	1 2 3 4
Penalty for neglect, etc. 1838, 163, § 23. G. S. 118, § 65. P. S. 157, § 69.	SECTION 79. An assignee refusing or unreasonably neglecting to execute an instrument when lawfully required by the court, or disobeying a lawful order or decree of the court, may be committed to jail in the county in which he is found or in which he resided when appointed, until he obeys such order or decree.	1 2 3 4 5
Appointment upon death of assignee with accounts unsettled. 1891, 400, § 1.	SECTION 80. If an assignee has died and it does not appear of record that his accounts have been settled or that the property of the estate has been disposed of or distributed by him, and the court in which proceedings in insolvency were commenced, upon petition by a creditor or the insolvent or a person who claims under either of them, after public notice and a hearing, finds as alleged in such petition that there is property to which the assignee would be entitled if living and which, if real estate, does not appear of record to have been conveyed by him or his heirs, representatives or devisees, it shall, unless cause is shown to the contrary, although	1 2 3 4 5 6 7 8 9 10

11 there may be no record of the proceedings in the case, appoint an
 12 assignee who may be required to give bond in such form and with
 13 such surety or sureties as it may order. Such property shall there-
 14 upon vest in said assignee, shall be sold at public or private sale by
 15 him and the net proceeds disposed of as hereinafter provided.

1 SECTION 81. The assignee shall give notice of his appointment
 2 in a daily newspaper published in Boston and in one published in
 3 the county of his appointment, once in each of five successive
 4 weeks, calling upon creditors to file their claims in said court
 5 within three months from a date stated in the notice subsequent to
 6 the first publication of said notice. The court shall hear and decide
 7 all claims so filed within said period, subject to appeal in like man-
 8 ner as other claims in insolvency, and all other claims shall be
 9 barred. When the amount due on such claims finally allowed has
 10 been ascertained or upon the expiration of said period without
 11 claim, the assignee shall apply for a decree of distribution, which
 12 shall be made after public notice, shall designate the claimants, to
 13 whom and in what proportions the amount in his hands shall be
 14 paid, and shall bind all parties. But the provisions of this and the
 15 preceding section shall not divest any title held by a bona fide pur-
 16 chaser who claims directly or indirectly under the insolvent.

Distribution.
 1891, 400, §§ 2, 3.

EXAMINATION OF DEBTOR.

1 SECTION 82. The debtor shall, if required by the court at any
 2 time before the granting of his certificate, upon reasonable notice,
 3 attend and submit to an examination on oath before the court, by
 4 the assignee or by a creditor, relative to his trade and dealings, his
 5 property and debts, and all matters which may affect the settlement
 6 of his estate; and upon cause shown by affidavit of any person
 7 interested in the estate, the court may summon any person sus-
 8 pected of having fraudulently received, concealed, embezzled or
 9 conveyed away property of the debtor, or of having assets of the
 10 debtor in his possession, or having knowledge of any thing material
 11 relative to the assets or dealings of the debtor, to appear and sub-
 12 mit to an examination in like manner. If the person summoned
 13 fails after notice to appear and submit to such examination, or
 14 to answer such interrogatories as are lawfully propounded to
 15 him, the court may commit him to the jail of the county until
 16 he submits to the order of the court. The judge may require such
 17 examinations to be in writing, signed by the person examined, and
 18 filed in court.

Examination
 of debtor and
 other persons.
 1838, 163, § 6.
 G. S. 118, § 66.
 1881, 235, § 1.
 P. S. 157, § 70.
 2 Met. 573.
 9 Met. 292.
 3 Gray, 115, 250.
 4 Cush. 448.
 9 Allen, 573.
 11 Allen, 439.
 152 Mass. 577.
 159 Mass. 193.

1 SECTION 83. If the debtor is in jail on an action or proceeding
 2 for or on account of a debt or claim provable against his estate, at
 3 any time before the granting of his certificate and if his attendance
 4 is required before the court or the assignee, or at a meeting of his
 5 creditors, the judge may, by a writ, require the jailer to produce
 6 the debtor for said purposes, at a time and place specified in the
 7 writ.

Examination
 of debtor if in
 prison.
 1838, 163, § 9.
 G. S. 118, § 67.
 P. S. 157, § 71.

1 SECTION 84. If the debtor, by reason of imprisonment, illness,
 2 or other sufficient cause, is unable to attend before the court or the

— if ill or un-
 able to attend.
 1838, 163, § 9.

G. S. 118, § 68.
P. S. 157, § 72.

assignee or at a meeting of his creditors, the court or a person appointed by it and the assignee, or a person appointed by him, shall conduct the examination of the debtor in jail or elsewhere, if he is within this commonwealth.

Examination of debtor if out of the commonwealth.
1838, 163, § 9.
G. S. 118, § 69.
P. S. 157, § 73.

SECTION 85. If the debtor is without this commonwealth and unable to return and personally attend at any of the times and for the purposes specified in this chapter, and if the court finds that such absence was not caused by his wilful default, and as soon as may be after the removal of such impediment he offers to attend and submit to an examination on oath before the court and the assignee as herein provided and to do all things required by the provisions of this chapter for the purpose of obtaining his certificate, he shall be entitled thereto in like manner as if he had done the same things at the times herein provided.

Debtor to do all necessary acts.
1838, 163, § 5.
G. S. 118, § 70.
P. S. 157, § 74.
157 Mass. 468.
133 U. S. 107.

SECTION 86. The debtor shall, at the expense of the estate, make and execute such deeds and writings and indorse such bills, notes and other negotiable papers, draw such checks and orders for money deposited in banks or elsewhere and do such other lawful acts as the assignee reasonably requires and as are necessary or useful to confirm the assignment, and enable the assignee to demand, recover and receive all the property so assigned, especially any part thereof which is without this commonwealth.

Failure to execute instruments, etc.
1838, 163, § 23.
G. S. 118, § 71.
P. S. 157, § 75.
2 Met. 573.
157 Mass. 468.

SECTION 87. If the debtor refuses or unreasonably neglects to execute an instrument lawfully required by the court or disobeys a lawful order or decree, the court shall issue its warrant to a civil officer, commanding him to arrest and commit the debtor to the jail in the county in which he may be found, or in which he dwelt at the time of his insolvency until he obeys such order or decree.

SECOND AND THIRD MEETINGS. OATH AND DISCHARGE.

Second meeting. Oath.
1838, 163, § 7.
1854, 329, § 3.
G. S. 118, § 72.
P. S. 157, § 76.
11 Cush. 164.

SECTION 88. The judge shall appoint a second meeting of the creditors, to be held at a court not more than three months after the date of the warrant. The debtor may then amend and correct his schedule of creditors, and shall take and subscribe an oath before the court, which shall be certified by him and filed in the case, in substance as follows:—

I, ———, do swear that the account of my creditors contained in the schedule made and signed by me and now on file in court is in all respects just and true, according to my best knowledge and belief. And I do further swear, that I have delivered to ———, the messenger, all my estate, not exempt from attachment, except such as has been necessarily expended for the support of myself and my family, and all my books of account and papers, relative to my said estate, that were within my possession or power when the same were demanded of me by the messenger; that I have delivered to my assignee such of my said estate, books and papers as has since come to my possession; and that if any other estate, books of account or papers, which shall or ought to be assigned and delivered to the assignee, shall hereafter come to my knowledge or possession, I will forthwith disclose or deliver them to him. And I do further swear that there is not any part of my property made over or disposed of in any manner for the future benefit of myself or my family, or in order to defraud my creditors.

1 SECTION 89. If a debtor or assignee who is required to make
2 oath before the judge is unable by reason of illness or other cause
3 to attend personally in court, the oath may be administered out of
4 court by the judge or by a person to whom a commission is issued
5 therefor.

Oaths out of
court.
1862, 68, § 1.
P. S. 157, § 77.

1 SECTION 90. If by reason of proceedings in the supreme judicial
2 court or for other cause, a failure to call or hold a second or third
3 meeting within the time provided occurs, the court may, upon peti-
4 tion by an interested party, order such meeting to be held at a sub-
5 sequent date.

Order of meet-
ing by court.
1854, 329, § 1.
G. S. 118, § 73.
1862, 179, § 8.
P. S. 157, § 78.

1 SECTION 91. Upon the death, resignation or neglect of the
2 assignee, or his absence from the county, whereby a meeting to be
3 notified by him is liable to be defeated, it may be notified by the
4 register on the order of the judge upon petition by an interested
5 party, with notice at the discretion of the judge to the assignee if
6 living.

— by register
on order of
court.
1854, 329, § 2.
G. S. 118, § 74.
P. S. 157, § 79.

1 SECTION 92. The judge shall appoint a third meeting of the
2 creditors to be held within six months after the appointment of the
3 assignee. If at such meeting or a meeting thereafter, the court
4 finds that the debtor has made a full disclosure and delivery of all
5 his property as herein required, and that he has conformed to the
6 provisions of law relative to insolvent debtors, the judge shall grant
7 him a certificate which shall state all fiduciary debts exempt from
8 discharge, and be in substance as follows : —

Third meeting.
Certificate of
discharge.
1838, 163, § 7.
1844, 178, § 3.
1848, 304, § 9.
G. S. 118, § 75.
P. S. 157, § 80.
11 Cush. 355,
442.
7 Allen, 112.

COMMONWEALTH OF MASSACHUSETTS.

, ss.

Court of Insolvency.

To all people to whom these presents shall come, I, A. B., judge of the court
of insolvency for said county of , send greeting.

Form of cer-
tificate of
discharge.
139 Mass. 84.

Whereas it has been made to appear to me that C. D., of B., in said county
of , whose estate has been assigned for the benefit of his creditors accord-
ing to law, has made a full disclosure and delivery of all his estate, and that he
has conformed to the provisions of law in that behalf made and provided, I do
certify that said C. D. is absolutely and wholly discharged from all his debts
which have been or shall be proved against his estate assigned as aforesaid, and
from all debts which are provable against his estate, and which are founded on
any contract made by him within this commonwealth or to be performed within
the same, and from all debts which are provable as aforesaid, and which are
founded on any contract made by him, and due to any persons who were resi-
dent within this commonwealth on the day of last, being the day
(of the first publication of the notice of the warrant issued for the seizure of the
estate of said C. D. — or in *involuntary proceedings* — of the first publication of
the notice of the filing of the petition against said C. D.); and from all claims
against him for or on account of any goods or chattels wrongfully obtained,
taken or withheld by him, according to the provisions of chapter one hundred
and sixty-three of the Revised Laws. And I do further certify that said C. D.
is by force of said chapter forever discharged and exempted from arrest or im-
prisonment in an action or upon any proceeding, for or on account of any debt or
demand which might have been proved against his estate assigned as aforesaid.

Given under my hand and the seal of said court this day of in
the year .

1 SECTION 93. The debtor shall thereupon, except as provided in
2 sections ninety-six and ninety-seven, be discharged from debts
3 proved against his estate and from all debts provable under the pro-

Effect of
discharge;
how pleaded.
1838, 163, § 7.
G. S. 118, § 76.

1879, 245, § 4.
P. S. 157, § 81.
10 Met. 332.
6 Cush. 225.
8 Cush. 375.
11 Cush. 29, 355.
13 Gray, 203.
1 Allen, 456, 512.
5 Allen, 10.
8 Allen, 315.
111 Mass. 77.
130 Mass. 503.
132 Mass. 186,
466.
133 Mass. 557.
134 Mass. 488.
139 Mass. 84.
150 Mass. 353.
151 Mass. 589.
156 Mass. 515.
165 Mass. 76.
166 Mass. 577.
168 Mass. 28.
172 Mass. 154.
173 Mass. 258.

visions of this chapter and founded on any contract made by him 4
while an inhabitant of this commonwealth, if made within this com- 5
monwealth, to be performed therein or due to any person resident 6
therein at the time of the first publication of the notice of the issu- 7
ing of the warrant in voluntary proceedings or of the first publi- 8
cation of the notice of the filing of the petition in involuntary 9
proceedings, and from all demands for or on account of any prop- 10
erty wrongfully obtained, taken or withheld by him, as provided in 11
section thirty-one, while such inhabitant. Such discharge may be 12
pleaded by a simple averment that on the day of its date it was 13
granted to the debtor, setting forth a copy thereof, as a full and 14
complete bar to all actions brought on such debts or claims. The 15
certificate shall be conclusive evidence of the fact and regularity of 16
such discharge. 17

177 Mass. 224.

Discharge
from imprison-
ment.
1838, 163, § 9.
G. S. 118, § 77.
P. S. 157, § 82.
150 Mass. 415.

SECTION 94. If the debtor at the time of obtaining his certificate 1
is in jail on an action or proceeding for or on account of a claim 2
provable against his estate, he shall be discharged from such im- 3
prisonment, upon producing to the jailer his certificate granted 4
under the provisions of this chapter. 5

— from arrest
and property
exempt from
attachment,
etc.
1838, 163, § 7.
1850, 97.
G. S. 118, § 78.
P. S. 157, § 83.
7 Met. 257.
12 Allen, 365.
136 Mass. 73.
150 Mass. 411.
164 Mass. 155.
166 Mass. 126,
128.
170 Mass. 405.
172 Mass. 519.

SECTION 95. The debtor shall also be forever thereafter dis- 1
charged and exempt from arrest or imprisonment in any action or 2
proceeding for or on account of a debt or demand provable against 3
his estate. And the property of the debtor acquired by him sub- 4
sequently to the time of the first publication of the notice of the 5
issuing of the warrant in voluntary proceedings or of the first pub- 6
lication of the notice of the filing of the petition in involuntary 7
proceedings shall not be subject to attachment by trustee process 8
or otherwise in any action to recover a debt which may have been 9
so provable and due to any person not resident in this common- 10
wealth at the time of such first publication, or founded on a con- 11
tract existing at the time of said first publication and made or to be 12
performed out of this commonwealth. 13

Debts not
discharged.
1844, 178, § 3.
1848, 304, § 10.
G. S. 118, § 79.
1879, 245, § 5.
1881, 257, § 2.
P. S. 157, § 84.
1885, 333, § 6.
9 Gray, 211.
15 Gray, 547.
1 Allen, 219,
456.
5 Allen, 210.
7 Allen, 264.
12 Allen, 366.
100 Mass. 498.
132 Mass. 283.
158 Mass. 250.
176 Mass. 460.

SECTION 96. No debt created by the debtor's defalcation as a 1
public officer, executor, administrator, guardian, receiver, trustee 2
or assignee of an insolvent estate, or by the fraud or embezzlement 3
of the debtor, nor claim for goods attached on mesne process or 4
taken on execution by the debtor as an officer or for misfeasance in 5
office, nor debt or claim against a pledgee created by his sale of 6
collateral securities in a manner not authorized by his contract with 7
the pledgor or by the provisions of sections eight and nine of chap- 8
ter one hundred and ninety-eight shall be discharged under the 9
provisions of this chapter, but the dividend declared thereon shall 10
be payment of so much of said debt or claim. A claim for neces- 11
saries furnished to the debtor or his family shall not be so discharged 12
unless the claim has been proved against his estate. 13

Action on
claim omitted
from schedule.
1897, 427.

SECTION 97. A creditor having a claim against an insolvent 1
debtor which was omitted from the schedule of creditors as filed 2
by said debtor, and who has not proved his claim, may, subject to 3
the provisions of the preceding section, recover from the debtor in 4
an action at law, notwithstanding a discharge in insolvency, the 5

6 same amount that the other creditors received who proved their
7 claims.

1 SECTION 98. A discharge shall not release a person liable for the
2 same debt as a partner, joint contractor, indorser, surety or other-
3 wise for or with the debtor. Persons jointly
liable not re-
leased.
1838, 163, § 7.
G. S. 118, § 80. P. S. 157, § 85.
1 Gray, 254. 10 Gray, 333. 168 Mass. 102. 170 Mass. 179.

1 SECTION 99. A discharge shall not be granted to a debtor whose
2 assets do not pay fifty per cent of the claims proved against his
3 estate, unless the assent in writing of a majority in number and
4 value of his creditors who have proved their claims has been filed
5 within six months after the date of the assignment. Discharge by
assent of cred-
itors.
1838, 163, § 7.
1844, 178, § 4.
1848, 304, § 9.
G. S. 118, § 81.
P. S. 157, § 86.
3 Gray, 254. 9 Gray, 334. 5 Allen, 10. 11 Allen, 566.

1 SECTION 100. A discharge shall not be granted to a debtor a
2 second time insolvent whose assets do not pay fifty per cent of the
3 claims proved against his estate, unless the assent in writing of
4 three-fourths in value of his creditors who have proved their claims
5 has been filed within six months after the date of the assignment.
6 No discharge shall be granted to a debtor a third time insolvent,
7 unless he has paid all the debts owed by him at the time of his pre-
8 vious insolvency or has been voluntarily released therefrom by his
9 creditors. — upon subse-
quent insol-
vency.
1844, 178, §§ 5, 6.
1856, 257.
G. S. 118, § 82.
P. S. 157, § 87.
5 Cush. 83.
10 Gray, 327.
156 Mass. 224.

1 SECTION 101. A creditor may assent to the debtor's discharge
2 under the provisions of the two preceding sections, although an
3 appeal from the allowance of his claim is pending, and such assent
4 shall be valid if the claim is finally allowed. Assent of cred-
itor notwith-
standing
appeal.
1852, 293.
G. S. 118, § 83.
P. S. 157, § 88.
3 Gray, 255.

1 SECTION 102. In determining the requisite assent of creditors,
2 no preferred claim which is paid in full, and, if not paid in full, no
3 part thereof which is paid, shall be regarded. Preferred cred-
itors not to
vote.
1881, 257, § 1.
P. S. 157, § 89.

1 SECTION 103. If a discharge has been refused a debtor for the
2 sole reason that the assent of the requisite majority of his creditors
3 has not been seasonably obtained or filed, or for the reason that he
4 has not taken the oath required by the provisions of section eighty-
5 eight, the judge, upon petition by the debtor within two years after
6 the date of the assignment and with the written assent of a majority,
7 or, in case of his second insolvency, of three-fourths in number and
8 value of the creditors who have proved their claims, may, if the
9 debtor takes the oath and obeys all lawful orders of the court, grant
10 his discharge, if after notice and a hearing, he finds that the failure to
11 obtain or file the assent was caused by accident or mistake or other
12 sufficient cause and by no fault of his own, or that the omission to
13 take the oath was owing to his inability by reason of illness, acci-
14 dent or mistake to attend and take such oath. Discharge of
debtor failing
by accident,
etc., to take
oath.
1858, 121.
G. S. 118, § 84.
1880, 246, § 4.
P. S. 157, § 90.
168 Mass. 232.

1 SECTION 104. The debtor or the assignee may, within ten days
2 after the decision of the judge upon the question of granting the
3 certificate of discharge to a debtor, upon notice to the register to
4 be entered with the record of proceedings, appeal from such decision
5 to the superior court. The appeal shall be entered at the return Appeal on
question of
discharge.
1838, 163, § 8.
1848, 304, § 11.
G. S. 118, § 85.
P. S. 157, § 91.
1885, 384, § 5.

11 Gray, 184.
7 Allen, 112.
132 Mass. 466.
177 Mass. 580.

day next after the expiration of fourteen days from the time of
claiming it. If the appellant in writing waives his appeal before
the entry thereof, proceedings may be had in the court of insolvency
as if no appeal had been taken.

Proceedings.
1838, 163, § 8.
G. S. 118, § 86.
1864, 254.
P. S. 157, § 92.

SECTION 105. The superior court shall, upon demand in writing
filed with the clerk by the debtor, the assignee or a creditor, frame
issues of fact for trial by jury, which shall be tried as nearly as may
be as an action at law; otherwise the appeal shall be heard and deter-
mined by the court. The assignee or a creditor may appear and
object to the allowance of the certificate. If upon a hearing the
court finds that the debtor has made a full disclosure and delivery
of all his estate as herein required, and that he has conformed to the
provisions of this chapter, it shall cause a certificate thereof sub-
stantially as provided in section ninety-two to be made under its
seal, signed by the clerk and delivered to the debtor.

MATTERS AVOIDING DISCHARGE.

Forfeiture of
discharge by
fraud of cred-
itor.
1838, 163, § 10.
1841, 124, § 3.
1844, 178, § 8.
1848, 304, § 9.
1856, 284, § 31.
1858, 54.
G. S. 118, § 87.
1881, 235, § 2.
P. S. 157, § 93.
1886, 322.
1898, 465.
8 Met. 490.
8 Cush. 103, 377.
12 Cush. 596.
5 Allen, 124.
6 Allen, 327.
11 Allen, 555.
13 Allen, 182.
128 Mass. 124.
132 Mass. 233.
136 Mass. 38,
340.
166 Mass. 379.

SECTION 106. A discharge shall not be granted or be valid, if
the debtor has wilfully sworn falsely to a material fact in the pro-
ceedings, or if he has fraudulently concealed any part of his prop-
erty or any books or writings relative thereto; or has made a
fraudulent payment, gift, transfer, conveyance or assignment of
any part of his property, or spent any part thereof in gaming; or
if, within six months before the filing of the petition by or against
him, he has obtained on credit from a person any property or other
thing of value, with intent not to pay therefor; or has procured his
property to be attached, sequestered or seized on execution; or has
destroyed, altered, mutilated or falsified any of his books, docu-
ments, papers, writings or securities or has made or been privy to
the making of any false or fraudulent entry in a book of account
or other document with intent to defraud his creditors; or with in-
tent to defraud his creditors has expended, invested or used any
part of his property in the erection, alteration, repair or location of
a building, portion of a building, structure or other object, on land
owned or leased wholly or in part by another so that it cannot be
lawfully removed; or has removed himself or removed or caused to
be removed any part of his property from the commonwealth with
intent to defraud his creditors; or if, having knowledge that a per-
son has proved a false claim against his estate, he has not disclosed
the same to his assignee within one month after such knowledge;
or, except as provided in the following section, if, being a merchant
or tradesman, he has not kept proper books of account. A dis-
charge shall be void if the debtor or a person in his behalf has
procured the assent of a creditor thereto by a pecuniary consid-
eration.

Discharge
when books of
account not
kept.
1894, 496.
11 Allen, 562.

SECTION 107. If the sole reason for not granting a discharge to
a debtor is that he has not kept proper books of account and if no
fraud is proved and the debtor has never been discharged in insol-
vency, the judge may after the expiration of six months from the
date of the assignment grant his discharge if the total amount of the
claims proved do not exceed five thousand dollars and two-thirds in

7 number and a majority in value of the creditors who have proved
8 their claims assent thereto in writing.

1 SECTION 108. If a person, in contemplation of becoming insol- Discharge
2 vent and of obtaining a discharge in insolvency, makes a payment, avoided by
3 pledge, assignment, transfer or conveyance of any part of his prop- fraudulent
4 erty, directly or indirectly, absolutely or conditionally, for the preference.
5 purpose of preferring a creditor or person who has a claim against 1838, 163, § 10.
6 him, or is or may be under any liability for him, or for the purpose 1841, 124, § 3.
7 of preventing the property from coming to the hands of his assignee 1856, 284, § 25.
8 in insolvency, or from being distributed under the laws relative to G. S. 118, § 88.
9 insolvency in satisfaction of his debts, he shall not be entitled to a P. S. 157, § 94.
10 discharge, and a discharge, if received by him, shall be void. 8 Met. 62, 377.

1 SECTION 109. A creditor whose debt was proved or provable —how con-
2 against an estate may, within two years after the date of a certificate tested.
3 of discharge, apply by petition to the court which granted it to annul 1879, 245, § 4.
4 the same, on the ground that it was fraudulently obtained, specify- P. S. 157, § 95.
5 ing all acts mentioned in section one hundred and six relied on 173 Mass. 431.
6 in avoidance, and no evidence shall be admitted as to any other of
7 such acts; but the petition may be amended in the discretion of
8 the court. If after notice to the debtor and a hearing the fraudu-
9 lent acts charged or any of them are proved and the court finds that
10 the creditor had no knowledge thereof until after the granting of
11 the discharge, it shall be annulled; otherwise it shall not be affected
12 thereby.

PREFERENCES.

1 SECTION 110. If a person who is insolvent or in contemplation Fraudulent
2 of insolvency, within six months before the filing of the petition by payments.
3 or against him, for the purpose of preferring a creditor or person 1838, 163, § 10.
4 who has a claim against him or who is under any liability for him, 1841, 124, § 3.
5 procures any part of his property to be attached, sequestered or 1856, 284, §§ 25,
6 seized on execution, or makes a payment, pledge, assignment, 26.
7 transfer or other conveyance of any part of his property, either G. S. 118, § 89.
8 directly or indirectly, absolutely or conditionally, the person re- P. S. 157, § 96.
9 ceiving such payment, pledge, assignment, transfer or conveyance, 7 Met. 520.
10 or to be benefited thereby, having reasonable cause to believe such 2 Cush. 160.
11 person is insolvent or in contemplation of insolvency and that such 3 Cush. 169.
12 payment, pledge, assignment, or conveyance is made in fraud of 3 Gray, 595.
13 the laws relative to insolvency, it shall be void; and the assignees 4 Gray, 111.
14 may recover the property or the value thereof from the person so 6 Gray, 160.
15 receiving it or so to be benefited. 1 Allen, 110.
10 Allen, 491.
11 Allen, 97.
99 Mass. 535.
102 Mass. 475.
128 Mass. 120.
131 Mass. 504.
133 Mass. 198.
135 Mass. 299.
136 Mass. 237.
142 Mass. 17.
144 Mass. 188.
148 Mass. 69,
507.

152 Mass. 249.	159 Mass. 365.	166 Mass. 323.	171 Mass. 74, 341.
153 Mass. 242.	161 Mass. 274.	168 Mass. 401.	177 Mass. 257.
156 Mass. 114.	164 Mass. 182.	169 Mass. 291.	164 U. S. 347.

1 SECTION 111. If a person who is insolvent or in contemplation Fraudulent
2 of insolvency, within six months before the filing of the petition by sales, etc.
3 or against him, except as provided in section thirty-eight, makes 1856, 284, § 27.
4 a sale, assignment, transfer or other conveyance of any part of his G. S. 118, § 91.
5 property to a person having reasonable cause to believe him insol- P. S. 157, § 98.
6 vent or in contemplation of insolvency, and that such sale, as- 2 Allen, 20.
7 signment, transfer or other conveyance is made in order to prevent 8 Allen, 451.
8 the property from coming to his assignee in insolvency, or to 13 Allen, 173,
182.
135 Mass. 299.
139 Mass. 566.
142 Mass. 518.
147 Mass. 388,
510.

148 Mass. 48.
153 Mass. 243,
502.
159 Mass. 271,
365, 498.
171 Mass. 341.
164 U. S. 347.

prevent it from being distributed under the laws relative to in- 9
solvency, or to defeat the object of, or to impair, hinder, impede or 10
delay the operation and effect of, or to evade, any of said provi- 11
sions, the sale, assignment, transfer or other conveyance shall be 12
void, and the assignee may recover the property or the value thereof 13
as assets of the estate. If such sale, assignment, transfer or con- 14
veyance is not made in the usual and ordinary course of business 15
of the debtor, that fact shall be prima facie evidence of such cause 16
of belief. 17

Application of
preceding sec-
tions.

1896, 284, § 25.
G. S. 118, § 90.
P. S. 157, § 97.

SECTION 112. The provisions of the six preceding sections 1
shall not apply to a payment of money or transfer of property in 2
payment, not exceeding twenty-five dollars in amount, upon a debt 3
contracted for necessities furnished to the debtor or his family. 4

ALLOWANCE AND SURPLUS.

Allowance to
debtor.
1838, 163, §§ 6, 8.
G. S. 118, § 92.
P. S. 157, § 99.
1888, 67.
8 Cush. 109.
160 Mass. 232.

SECTION 113. The debtor shall receive from the assignee one 1
dollar a day for his attendance upon the court or the assignee if 2
required under the provisions of section eighty-two. He shall also 3
be allowed out of his estate, for the necessary support of himself 4
and family, such amount not exceeding the rate of three dollars a 5
week for each member of his family, and for such time not exceed- 6
ing two months, as the court orders. A debtor who is discharged 7
shall be allowed five per cent on the net proceeds of all his estate 8
received by the assignee, if such net proceeds after such allowance 9
is sufficient to pay the creditors entitled to a dividend the amount 10
of fifty per cent on their debts: but the allowance shall not exceed 11
in all five hundred dollars. In case of the absence of the debtor or 12
his failure to apply for either of said allowances the judge may 13
allow the same amount to his wife or any minor child or children 14
of the debtor. 15

— how paid in
case of death.
1838, 163, § 5.
G. S. 118, § 93.
P. S. 157, § 100.

SECTION 114. If an allowance to the debtor on the net proceeds 1
of his estate becomes due and is not paid to him in his lifetime, it 2
shall be paid to his executor or administrator, and be disposed of in 3
like manner as other property of which he may be possessed at his 4
decease. 5

Surplus to be
returned to
debtor.
1838, 163, § 13.
G. S. 118, § 94.

SECTION 115. If after the payment of all debts proved a sur- 1
plus remains in the hands of the assignee, it shall be paid or re- 2
conveyed to or revest in the debtor or his legal representatives. 3

P. S. 157, § 101.

6 Met. 203.

ACCOUNTS AND DIVIDENDS.

Accounts.
1838, 163, § 12.
G. S. 118, § 95.
1862, 179, § 6.
P. S. 157, § 102.
1884, 126.
10 Cush. 173,
498.
6 Gray, 366.
14 Gray, 154.

SECTION 116. At the third meeting the assignee shall exhibit 1
under oath to the court and creditors present fair and just accounts 2
of all his receipts and payments relative to the estate, and may be 3
examined relative thereto by the court. If there are two or more 4
joint assignees their accounts may be allowed upon the oath of one 5
of them. The notice of the third and all subsequent meetings of 6
creditors shall contain a statement that the accounts of the assignee 7
will be presented, and that creditors may appear and object to the 8

9 allowance thereof. Special notice of the presentation of accounts
10 may be ordered at other times by the court to be given in such
11 manner as it orders. In all cases the judge shall pass upon the
12 reasonableness of the accounts of assignees, although no creditor
13 appears to object.

1 SECTION 117. The judge shall at said third meeting order a div-
2 idend of the property, or a part thereof, among the creditors who
3 have proved their claims, in proportion to their respective debts;
4 but, at any time after the assignment, upon request of the assignee
5 or a creditor, and upon notice to the creditors and assignee, the
6 judge may order the payment, in whole or in part, of claims entitled
7 to priority or preference under the provisions of this chapter.

Dividend.
1838, 163, § 12.
G. S. 318, § 95.
1879, 245, § 6.
P. S. 157, § 103.
8 Allen, 318.

1 SECTION 118. In the order for a dividend under the provisions
2 of the preceding section, the following claims shall be first paid in
3 full in the following order:—

4 First, The twenty-five dollars or expense of publication as pro-
5 vided in section one hundred and seventy paid by a creditor and
6 the legal fees, paid by him, of an officer for the service of the
7 order of notice to the debtor upon the original petition and for the
8 service of a writ of injunction issued to restrain the transfer or dis-
9 position of any part of the debtor's property, not exempt from
10 attachment, and from any interference therewith.

Preferred
claims.
1838, 163, §§ 12,
24.
1841, 124, § 6.
1850, 218.
1856, 284, § 24.
1858, 119.
G. S. 318, §§ 25,
96.
1862, 179, § 5;
183, § 11.
1879, 95, § 1.
P. S. 157, §§ 104,
137.
1895, 394, §§ 6-8.
2 Cush. 371.
13 Gray, 307.
138 Mass. 99.

11 Second, The legal fees of the messenger.

12 Third, Debts due to the United States, and debts due to and
13 taxes assessed by this commonwealth, or a county, city or town
14 therein.

150 Mass. 180.

15 Fourth, Wages, to an amount not exceeding one hundred dollars,
16 due to a clerk, servant or operative for labor performed within one
17 year last preceding the first publication of the notice, or for labor
18 for the recovery of payment for which an action commenced within
19 one year after the performance thereof is pending, or has terminated
20 within one year from said first publication.

21 Fifth, Debts due to physicians for medical attendance on the
22 debtor or his family, rendered within six months prior to the insti-
23 tution of proceedings in insolvency, to an amount not exceeding
24 fifty dollars.

25 Sixth, Debts due to persons who by the laws of the United States
26 or of this commonwealth are or may be entitled to a priority or
27 preference in like manner as if this chapter had not been enacted.

28 Seventh, Other legal fees, costs and expenses of suit, and for
29 the custody of the property proved as preferred under the pro-
30 visions of section one hundred and seventy-four.

152 Mass. 596.

1 SECTION 119. Upon petition by a creditor upon whose petition
2 a warrant has issued against a debtor and after notice to such debtor
3 and his assignee, if any, the court may allow as a preferred claim
4 against the estate such amount as said creditor has actually paid for
5 his expenses and for counsel fees incurred for services rendered
6 upon such petition and in the legal proceedings connected there-
7 with prior to the issuing of the warrant. Such petition shall be
8 verified by the oath of the creditor and of the counsel to whom such
9 money was paid.

Allowance to
petitioning
creditor for
counsel fees,
etc.
1897, 119.

Wages due to an operative from an operative working under contract. 1879, 204. P. S. 157, § 105.

SECTION 120. The estate shall be liable for wages due to an operative from another operative who has contracted or agreed to do certain specified work for the debtor, to the amount of one hundred dollars, for labor actually performed on such work within one year last preceding the first publication of the notice, and in the division of the estate such wages shall have the priority given to wages due to operatives under the provisions of the preceding section; but all payments under the provisions of this section shall be charged to the account of the operative who, as principal has contracted or agreed to do the work, and such payments, and the liability herein imposed, shall not exceed the amount due such principal operative for such work performed within the time hereinbefore mentioned. The provisions of this section shall not apply to cases within the provisions of sections one hundred and sixty-four to one hundred and sixty-eight, inclusive, of chapter one hundred and eleven.

Reservation for absent creditors. 1838, 163, § 12. G. S. 118, § 97. P. S. 157, § 106.

SECTION 121. If at the time of ordering the dividend it appears probable that there are just claims against the estate which for sufficient reason have not been proved, the judge in ordering the dividend shall leave in the hands of the assignee an amount sufficient to pay every such absent creditor a proportion equal to what shall be then paid to the other creditors. Such amount shall remain thus unappropriated in the hands of the assignee until the final dividend is declared, or until the judge orders its distribution.

Unclaimed dividends. 1883, 242. 1897, 303, § 1.

SECTION 122. If a dividend, which the judge has declared or which has become payable to a creditor who has proved his claim under a composition confirmed by the court remains for six months unclaimed, the assignee or, in a case of composition, the register, may deposit it in a savings bank or other like institution or invest it in bank stock or other stocks, as the court may order, to accumulate for the benefit of the person entitled thereto. Such deposit or investment shall be made in the name of the judge and shall be subject to his order and that of his successors in office as hereinafter provided. The person who makes such deposit or investment shall file in court a memorandum thereof, with the original certificate or other evidence of title thereto, which shall be allowed as a voucher for such payment. When the person entitled to the money deposited has satisfied the judge of his right to receive the same, he shall cause it to be transferred and paid over to him.

Unclaimed deposits. 1897, 303, § 2.

SECTION 123. If money deposited with a register to secure the payment of fees or to carry out a composition confirmed by the court remains unclaimed for one year after the depositor or other person is entitled to receive it, the register may, under the direction of the judge, deposit it in a savings bank or invest it in the manner and subject to the provisions of the preceding section.

Second dividend. Assignee's accounts. 1838, 163, § 13. G. S. 118, § 98. P. S. 157, § 107.

SECTION 124. The assignee shall, at such time as the judge orders within eighteen months after his appointment, declare a second dividend of the estate, if the property was not wholly distributed upon the first dividend, and shall give notice of a meeting of all the creditors of the debtor for such purpose. At such meeting

6 the accounts of the assignee shall be produced and examined as
7 provided in section one hundred and sixteen and settled by the
8 court; and any balance appearing to be in the hands of the assignee
9 shall, by order of the judge be divided among all the creditors who
10 have proved their debts, in proportion thereto.

1 SECTION 125. If at any time before the final dividend any out-
2 standing debts or other property due or belonging to the estate
3 which cannot in the opinion of the court be collected and received
4 by the assignee without unreasonable or inconvenient delay, re-
5 main in the hands of the assignee he may under the direction of the
6 court sell and assign such debts or other property in such manner
7 as the court orders.

Sale, etc., of
outstanding
debts, etc.
1838, 163, § 13.
G. S. 118, § 102.
P. S. 157, § 108.

1 SECTION 126. An action upon a claim sold by an assignee shall
2 be brought in the name of the purchaser. The fact of sale and of
3 purchase by the plaintiff shall be set forth in the writ, and the
4 defendant may avail himself of any matter of defence of which he
5 could have availed himself in an action upon the claim by the as-
6 signee. Costs in such actions shall be recovered by or against the
7 plaintiff, and the assignee shall not be liable therefor.

Actions on
claims sold by
assignees.
Costs.
1859, 194.
G. S. 118, § 100.
P. S. 157, § 109.
1 Allen, 213.
3 Allen, 90.
132 Mass. 385.
163 Mass. 70.

1 SECTION 127. The second dividend shall be final: but if an
2 action relative to the estate is then pending or part of the estate is
3 outstanding or other property of the debtor afterward comes to the
4 hands of the assignee, another dividend shall be made by order of
5 the judge. Further dividends shall be made in like manner as
6 often as occasion requires.

Further
dividends.
1838, 163, § 13.
G. S. 118, § 101
P. S. 157, § 110.

1 SECTION 128. No creditor whose debt is proved at the time of
2 the second or any subsequent dividend shall disturb a prior dividend,
3 but he shall be paid so far only as the funds remaining unappropri-
4 ated in the hands of the assignee are sufficient therefor.

Former divi-
dends not to be
disturbed.
1838, 163, § 13.
G. S. 118, § 102.
P. S. 157, § 111.

PETITION BY CREDITORS.

1 SECTION 129. If a person arrested on mesne process in a civil
2 action for the amount of one hundred dollars or more founded upon
3 a claim provable against the estate of an insolvent debtor, has not
4 given bail therein on or before the return day of such process, or
5 has been actually imprisoned thereon for more than thirty days;
6 or if a person whose property has been attached on mesne process
7 in such action founded upon such contract has not before the return
8 day of such process dissolved the attachment as provided by law;
9 or if a person has removed himself or any part of his property from
10 the commonwealth, with intent to defraud his creditors; or has
11 concealed himself to avoid arrest, or any part of his property to
12 prevent its being attached or taken on a legal process; or pro-
13 cured his arrest or his property to be attached or taken on legal
14 process; or made a fraudulent payment, conveyance or transfer of
15 any part of his property; or, being a banker, broker, merchant,
16 trader, manufacturer, contractor, builder or miner, has fraudu-
17 lently stopped payment, or has stopped or suspended and not re-

Petition by
creditors.
1838, 163, § 19.
1844, 178, §§ 9,
12, 13.
1851, 189, § 2.
1856, 284, §§ 25,
29.
G. S. 118, § 103.
1879, 245, § 7.
1880, 246, § 5.
1881, 233.
P. S. 157, § 112.
1890, 431.
1893, 405, § 2.
1894, 261.
1895, 201.
2 Met. 573.
9 Met. 202.
8 Cush. 101.
4 Gray, 550.
5 Gray, 141.
6 Gray, 329.
8 Gray, 316.
9 Gray, 50.
6 Allen, 118.
128 Mass. 120.
145 Mass. 346.
146 Mass. 385.
150 Mass. 574.
163 Mass. 171.

sumed payment of his commercial paper within fourteen days ; any
 of his creditors whose claims provable against his estate amount to
 one hundred dollars, may, within ninety days thereafter, or, in the
 case of any such fraudulent conveyance of land, within ninety days
 after it has been recorded, if the debtor has resided in the common-
 wealth within one year, file a petition under oath in the court of
 insolvency for the county, if any, in which the debtor has last
 resided or had a usual place of business for three consecutive months
 before the filing of said petition, otherwise in the court for the
 county in which he resides or last resided, or has or has had a usual
 place of business, stating the facts and the nature of their claims
 and praying that his property may be seized and distributed accord-
 ing to the provisions of this chapter.

Notice of peti-
 tion, etc.
 1879, 245, § 7.
 1880, 246, § 2.
 1881, 235, § 3.
 P. S. 157, § 113.

SECTION 130. The register shall cause notice of the filing of
 such petition to be published twice in not more than two news-
 papers, and shall forthwith make and file a certificate of the fact
 and date of publication. The actual expense of such publication
 shall be paid from the amount deposited by the creditor therefor
 as provided in section one hundred and seventy ; but a hearing
 upon the petition may be had or a warrant issued thereon prior to
 the completion of the publication of said notice. The court may,
 after the commencement of proceedings by or against the debtor
 and before the hearing upon the petition, by injunction restrain the
 debtor and any other person from making, transferring or disposing
 of any part of the debtor's property not exempt from attachment,
 and from any interference therewith ; and if probable cause appears
 for believing that the debtor is about to conceal or remove from the
 commonwealth his property or his evidence of property, or any
 part thereof or to make a fraudulent conveyance or disposition
 thereof, the judge may issue a warrant under his hand to the sheriff
 of the county or one of his deputies, ordering him forthwith as mes-
 senger to take possession of all the property of the debtor, not
 exempt from attachment, and safely keep it until the further order
 of the court.

Warrant.
 Proceedings
 thereon.
 1838, 163, § 19.
 G. S. 118, § 104.
 P. S. 157, § 114.
 6 Met. 518.
 4 Cush. 121.
 8 Gray, 316.

SECTION 131. If, after notice of the petition to the debtor by a
 copy thereof served upon him personally or left at his last and
 usual place of abode, and a hearing of the petitioner and debtor, or
 a default by the debtor to appear in pursuance of said notice, the
 court finds the facts stated in the petition to be true, the judge shall
 forthwith issue a warrant to take possession of the property of the
 debtor. The warrant shall be directed, and the property of the
 debtor shall be thereupon taken and distributed in like manner and
 with proceedings similar to those herein provided in case of volun-
 tary petitions.

Stay of
 proceedings.
 1851, 189, § 3.
 G. S. 118, § 105.
 1880, 246, § 6.
 P. S. 157, § 115.
 1894, 139.
 163 Mass. 171.

SECTION 132. If a person or corporation has committed an act
 of insolvency from which he or it should be equitably relieved, the
 court may upon petition by him or it, with or without notice to the
 petitioning creditor, stay proceedings in insolvency and if, upon a
 hearing, it finds that he or it is solvent or that the proceedings
 ought to be stayed it may dismiss the petition in insolvency.

PETITION BY CREDITORS OF INSANE PERSONS.

1 SECTION 133. Any of the creditors of an insolvent insane per-
 2 son, whose claims provable against his estate amount to one hundred
 3 dollars, may file a petition under oath in the court of insolvency
 4 for the county, if any, in which the debtor has last resided or had
 5 a usual place of business for three consecutive months before the
 6 filing of said petition, otherwise in the court for the county in which
 7 he resides, or has a usual place of business, stating his insolvency
 8 and the nature of their claims, and praying that his property may
 9 be seized and distributed according to the provisions of this chapter.
 10 If after public notice and the appointment of a guardian ad litem
 11 for such insane person, and a hearing, the court finds that the
 12 interests of the debtor and creditors so require, the judge may
 13 issue a warrant to take possession of the property of the debtor
 14 and thereupon like proceedings shall be had as in the settlement
 15 of estates of other insolvent debtors.

Petition by
 creditors of
 insane person.
 1880, 217, §§ 1, 4.
 1881, 233.
 P. S. 157, § 116.
 1893, 405, § 3.

1 SECTION 134. In such case, the schedules of creditors and of
 2 property required by the provisions of this chapter shall be made
 3 and filed by the messenger, upon his best information and belief.
 4 The debtor shall not be required to attend at any meeting of cred-
 5 itors nor be subject to examination, unless ordered by the court.

Schedules.
 1880, 217, § 2.
 P. S. 157, § 117.

1 SECTION 135. Within six months after recovering from his in-
 2 sanity, the debtor may petition the court for a discharge from his
 3 debts, and shall thereupon be required to deliver to his assignee
 4 for the benefit of his creditors any property which was in his hands
 5 or possession or to which he was entitled at the time of the filing
 6 of the original petition, and which had not come into the hands or
 7 possession of his assignee; shall make a full disclosure thereof, and
 8 shall take and subscribe an oath that he has so done; shall submit
 9 himself to examination thereon, and may within three months after
 10 the filing of his petition file the assent in writing to his discharge
 11 of a majority in number and value of his creditors who have proved
 12 their claims, as provided in section ninety-nine. If the court finds,
 13 at a meeting of the creditors called for the purpose, that he has
 14 made a full disclosure and delivery of his property as herein re-
 15 quired, that he has conformed to the provisions of this chapter so
 16 far as applicable and that his assets have paid fifty per cent of the
 17 claims proved against his estate, or that the assent in writing to his
 18 discharge of a majority in number and value of his creditors who
 19 have proved their claims has been filed, the judge shall grant him a
 20 certificate, which shall state all fiduciary debts exempt from dis-
 21 charge and shall be in the form and have the effect provided by this
 22 chapter for discharges of other insolvent debtors.

Debtor, after
 recovering
 from insanity,
 may apply for
 discharge.
 1880, 217, § 3.
 P. S. 157, § 118.

CONCEALMENT OF PROPERTY.

1 SECTION 136. A debtor who after notice of the filing of a peti-
 2 tion by or against him secretes or conceals property belonging to
 3 his estate, or any books, deeds, documents or writings relative
 4 thereto, or removes or causes to be removed the same or any part
 5 thereof out of the commonwealth, or otherwise disposes of any part

Concealment,
 etc., of prop-
 erty.
 1856, 284, § 30.
 G. S. 118, § 106.
 P. S. 157, § 119.
 189 Mass. 465.

thereof, in order to prevent it from coming to the possession of the messenger or assignee, or to hinder, impede or delay either of them in recovering or receiving the same, or who makes a payment, gift, sale, assignment or other conveyance of property belonging to his estate: or spends any part thereof in gaming, or otherwise except such as may reasonably be expended for the support of himself and family, not exceeding the amount allowable by law, shall be punished by imprisonment in the state prison for not more than five years, or in jail for not more than two years.

PARTNERSHIPS.

Petition by or against partnerships.
1838, 163, § 21.
1856, 284, § 37.
1858, 93, § 10.
G. S. 118, § 108.
1881, 233.
P. S. 157, § 120.
1893, 405, § 4.
1894, 30.
2 Cush. 175.
4 Cush. 127.
5 Cush. 224.
11 Cush. 236.
3 Gray, 239, 542.
3 Allen, 554.
101 Mass. 300.
148 Mass. 269.
167 Mass. 123.

SECTION 137. Upon petition by one or more partners who are insolvent to the court for the county, if any, in which the partnership has last had a usual place of business for three consecutive months before the filing of such petition, otherwise to the court for the county in which it has or last had a usual place of business, after notice to the other partners if within the commonwealth, or upon petition by a creditor of the partners, the judge may issue a warrant as provided in this chapter, upon which the property of the firm and the separate estate of each of the partners, not exempt from attachment, shall be taken, and the creditors of the firm and the separate creditors of each partner may prove their respective debts.

Choice of assignee; joint and separate property.
1838, 163, § 21.
G. S. 118, § 109.
P. S. 157, § 121.
4 Cush. 99.
10 Cush. 458.
5 Gray, 574.
10 Gray, 254.
260, 263.
13 Gray, 115, 465.
148 Mass. 269.
160 Mass. 171.
163 Mass. 352.
165 Mass. 312.
166 Mass. 379.
177 Mass. 52.

SECTION 138. The assignee shall be chosen by the creditors of the firm and shall keep separate accounts of the joint property of the firm, and of the separate estate of each member thereof; and after deducting from the whole amount received by him the total expenses and disbursements paid, the net proceeds of such joint property shall be appropriated to pay the creditors of the firm, and the net proceeds of the separate estate of each partner shall be appropriated to pay his separate creditors. If there is a balance of the separate estate of a partner after the payment of his separate debts, it shall be added to such joint property for the payment of the firm creditors. If there is a balance of such joint property after the payment of the firm debts, it shall be divided and appropriated to and among the separate estates of the several partners according to their respective rights and interests therein, and as it would have been if the partnership had been dissolved without insolvency; and the amount so appropriated to the separate estate of each partner shall be applied to the payment of his separate debts.

Limited partnerships.
1838, 163, § 22.
G. S. 118, § 110.
P. S. 157, § 122.
101 Mass. 300.

SECTION 139. The provisions of the two preceding sections shall apply to insolvent limited partnerships formed under the provisions of chapter seventy-one or the corresponding provisions of earlier laws; but the separate estates and separate debts of the special partners shall not be subject to the proceedings against the partnership.

Separate allowance to each partner.

SECTION 140. Each partner shall be entitled to allowance as hereinbefore provided for the maintenance of himself and family;

3 and the allowance from the net proceeds of the estates as provided
 4 in section one hundred and thirteen shall be computed on the firm
 5 estate and also on each of the separate estates as if there had been
 6 a separate warrant against each ; but none of the partners shall re-
 7 ceive in all more than five hundred dollars.

1838, 163, § 21.
 G. S. 118, § 111.
 P. S. 157, § 123.
 8 Cush. 109.
 163 Mass. 235.

1 SECTION 141. The certificate of discharge shall be granted or
 2 refused to each partner as it would or ought to be if the proceed-
 3 ings had been against him alone ; otherwise the proceedings against
 4 partners shall be the same as against an individual.

Certificate of
 discharge to
 each partner.
 1838, 163, § 21.
 G. S. 118, § 112.
 P. S. 157, § 124.

5 Cush. 613.

1 SECTION 142. If upon the dissolution of a partnership, one or
 2 more of the partners or a new partnership formed by the addition
 3 of new members has agreed to pay any outstanding debts of such
 4 partnership, or if a person or firm, in consideration of the receipt or
 5 transfer of property, has agreed to pay any outstanding debts of
 6 the person from whom such property was received or transferred,
 7 and the person agreeing to pay has become insolvent, such debts
 8 may, if the creditors so elect, be proved against the estate of such
 9 insolvent debtor or debtors, and the proof and allowance thereof
 10 shall discharge the person originally liable therefor. If the original
 11 debtor, in either of such cases has been compelled to pay the debt
 12 so agreed to be paid, he may prove the amount so paid as the
 13 original creditor might have done.

Proof of part-
 nership debts
 assumed by
 one or more
 partners, etc.
 1865, 113, §§ 1, 2.
 P. S. 157, §§ 123,
 126.
 14 Gray, 534.
 3 Allen, 579.
 97 Mass. 257.
 156 Mass. 375.

CORPORATIONS.

1 SECTION 143. A domestic corporation or a foreign corporation
 2 mentioned in section four of chapter one hundred and twenty-six,
 3 except railroad and banking corporations and foreign insurance
 4 companies, may file a petition signed by an officer duly authorized
 5 by a vote of a majority of the corporators present and voting at a
 6 legal meeting called for the purpose, in the court for the county
 7 in which the corporation has its principal place of business, stating
 8 its inability to pay its debts and its willingness to assign its prop-
 9 erty for the benefit of its creditors, and praying that such proceed-
 10 ings may be had as are hereinafter provided. The judge shall forth-
 11 with issue a warrant, as upon a petition by a debtor under the
 12 provisions of section twenty, which shall require that the notice
 13 given by the messenger shall state further that the making of any
 14 contract by the corporation is forbidden by law. The proceedings
 15 thereon, except as hereinafter provided, shall be the same as upon
 16 the petition of a natural person, and in the case of foreign cor-
 17 porations shall apply only to property of the corporation within the
 18 commonwealth and the oath provided for in section one hundred
 19 and forty-five shall be modified in accordance herewith.

Petition by
 corporations.
 1851, 327, §§ 1, 2,
 26.
 G. S. 118, §§ 113,
 114.
 P. S. 157, §§ 127,
 128.
 1890, 321, § 1.
 13 Allen, 405.
 167 Mass. 28.
 172 Mass. 154.

1 SECTION 144. Claims on account of bills of exchange, indorse-
 2 ments, money due on bottomry or respondentia bonds or paid upon
 3 indorsements or as surety may be proved against an insolvent cor-
 4 poration before the making of the last dividend, in like manner as
 5 against the estate of an insolvent debtor before the making of the
 6 first dividend.

Claims prov-
 able before
 last dividend.
 1851, 327, § 3.
 G. S. 118, § 115.
 P. S. 157, § 129.
 1890, 321, § 1.
 152 Mass. 596.

Schedules.
Duties, etc., of
officers.
1851, 327, §§ 7, 8.
G. S. 118, § 116.
P. S. 157, § 130.
1890, 321, § 1.
168 Mass. 82.

SECTION 145. The schedules to be furnished shall be prepared 1
and furnished by the treasurer or other financial officer of the cor- 2
poration, with such assistance from the other officers as he may 3
require; and the provisions of this chapter which apply to the 4
debtor or set forth his duties relative to executing papers, submit- 5
ting to examinations, disclosing, making over, secreting, conceal- 6
ing, conveying, assigning or paying away his money or property, 7
shall apply to each officer of the corporation relative to the same 8
matters concerning the corporation and the money and property 9
thereof. Said officers shall at the second meeting severally make 10
and subscribe an oath in substance as follows:— 11

Oath.

I, ———, (president, etc., or treasurer, etc.,) do swear that I verily believe the account of the creditors of the corporation, contained in the schedule signed by A. B., and now on file in court, is in all respects just and true: that I do verily believe that all the property and estate of said corporation, and all its books of account and papers, have been delivered to the messenger or the assignee; and that if any goods or estate not so delivered hereafter come to my knowledge, I will faithfully and diligently apprise the assignee thereof. And I do further swear that, to the best and utmost of my knowledge, information and belief, there is no part of the estate or effects of said corporation made over or disposed of in any manner in fraud of the laws relative to insolvency or of the creditors of said corporation.

Powers and
duties of as-
signee.
1890, 321, § 2.

SECTION 146. An assignee of a foreign corporation shall have 1
like rights and duties as an assignee of a domestic corporation rela- 2
tive to property within the commonwealth or which may be put 3
into his possession by said corporation. He shall as far as practi- 4
cable so distribute the assets that all the creditors within or without 5
the commonwealth shall receive proportionate dividends from the 6
assets whether they are in the control of the assignee or not. The 7
claims entitled to priority under the provisions of this chapter shall 8
have like priority in the case of such corporations. 9

Land damages
preferred
claims.
1851, 327, § 19.
G. S. 118, § 119.
P. S. 157, § 133.

SECTION 147. Claims against a corporation authorized to take 1
land or materials for damages for such taking shall be preferred 2
claims, next after debts due to the United States and to the com- 3
monwealth. 4

Void prefer-
ences.
1851, 327, § 9.
G. S. 118, §§ 120,
121.
P. S. 157, §§ 134,
135.
10 Gray, 243.
121 Mass. 399.

SECTION 148. The provisions of sections one hundred and ten 1
and one hundred and eleven shall apply to corporations subject to 2
the provisions of this chapter, and an allowance or discharge shall 3
not be granted to a corporation, nor to a person as officer or mem- 4
ber thereof. 5

Petition by
creditors.
1851, 327, § 17.
1856, 284, § 25.
G. S. 118, § 122.
P. S. 157, § 136.
1890, 321, § 1.
1897, 124.
163 Mass. 171,
252.
172 Mass. 166.

SECTION 149. If a corporation described in section one hundred 1
and forty-three whose property has been attached on mesne process 2
in a civil action founded on a contract for the amount of one hun- 3
dred dollars or more, which is provable under the provisions of this 4
chapter, has not within fourteen days from the return day of the 5
writ, dissolved the attachment as provided by law, or if such corpo- 6
ration has removed any part of its property from the commonwealth, 7
with intent to defraud its creditors, or conceals any part of its 8
property to prevent its being attached or taken on legal process, or 9
has procured its property to be attached or taken on legal process, 10
or has made a fraudulent payment, conveyance or transfer of its 11

12 property or any part thereof, or has stopped or suspended and has
13 not resumed payment of its commercial paper within fourteen days,
14 any of its creditors whose claims provable against its estate amount
15 to one hundred dollars may, within ninety days thereafter, file a
16 petition under oath in the court for the county in which the corpo-
17 ration has its principal place of business, stating the facts and the
18 nature of their claims, and praying that its property or, if a foreign
19 corporation, its property in the commonwealth, may be seized and
20 distributed according to the provisions of this chapter: and there-
21 upon, if after notice to a domestic corporation by serving on its
22 president, treasurer or clerk, or to a foreign corporation by serving
23 upon the commissioner of corporations, thirty days at least before
24 the return day of the notice a copy of the petition, and a hearing
25 or upon default of the corporation to appear at the time and place
26 appointed in the notice, the court finds the facts stated in the peti-
27 tion to be true, the judge shall forthwith issue a warrant to take
28 possession of the property of the corporation or, if a foreign corpora-
29 tion, of its property in the commonwealth; and thereupon like
30 proceedings shall be had as upon a warrant issued upon the petition
31 of a corporation.

COMPOSITION.

1 SECTION 150. Instead of proceeding as required by the laws
2 relative to insolvency, an insolvent debtor or a domestic corpora-
3 tion subject to the provisions of this chapter having capital stock
4 may obtain a discharge from his or its debts as hereinafter provided.

Composition.
1884, 236, § 1.
1897, 247, § 1.

1 SECTION 151. At any time after the filing of the petition by or
2 against the debtor and the schedules required by law, he may file a
3 written proposal for composition with his creditors, stating the
4 amount of the proposed dividend, which shall be payable only in
5 money, the date when payable and the security to be given for
6 such payments so far as deferred. Such proposal shall not be con-
7 sidered unless it conforms to such requirements, nor unless it pro-
8 vides for payment in full of all debts and charges entitled to
9 priority.

Proposal for
composition.
1884, 236, § 2.

1 SECTION 152. If the allegations of the petition appear to be
2 true or if a warrant has been issued thereon, the court, upon the
3 filing of the proposal for composition, may stay or suspend any
4 process or proceeding which would otherwise be required by law
5 and may make appropriate orders relative thereto or to the custody
6 of the estate. It shall order a hearing on such proposal or a modi-
7 fication thereof under the provisions of section one hundred and
8 fifty-six, of which the register shall send notice by mail post paid
9 to all known creditors not less than seven days before the day
10 appointed therefor, stating the substance of the proposal or modi-
11 fication thereof.

Stay of pro-
ceedings by
court, etc.
1884, 236, § 3.
1885, 353, § 2.
1889, 406, § 3.
165 Mass. 317.
168 Mass. 100.

1 SECTION 153. Books of account and papers of the debtor rel-
2 ative to his estate shall until the final hearing on confirmation of
3 the composition be open at all reasonable times to examination by
4 any creditor or his agent, and the court may enforce production
5 thereof: and during such period the debtor or any other person

Accounts and
papers open to
examination.
1884, 236, § 4.

may be examined by the court or by a creditor as provided by 6
section eighty-two. 7

Provisions
applicable.
1884, 236, § 5.
1885, 353, § 1.
157 Mass. 175.
163 Mass. 26.
165 Mass. 585.

SECTION 154. The provisions of sections thirty-one, thirty- 1
three, thirty-four, thirty-six, thirty-nine, forty, forty-one and forty- 2
three to forty-eight, inclusive, relative to debts and proof of claims, 3
shall apply to composition proceedings so far as applicable thereto; 4
but the proceedings shall not be stayed or suspended on account of 5
an appeal from the allowance or rejection of a claim. 6

Effect of
notice of pro-
posal.
1884, 236, § 5.
1889, 406, § 1.

SECTION 155. In composition proceedings in which no warrant 1
has been issued the date of the notice by the register to the cred- 2
itors of the debtor's proposal of composition shall have the same 3
effect relative to the proof of claims and the debtor's discharge as 4
the date of the first publication of the issuing of the warrant in vol- 5
untary proceedings in insolvency. 6

Hearing and
assent of cred-
itors.
1884, 236, §§ 6-8.
1885, 353, §§ 2, 3.
1889, 406, § 3.
161 Mass. 554.

SECTION 156. The debtor shall be present at the hearing and 1
may then be examined by the court or by a creditor relative to his 2
estate, and other evidence may be offered. At any time before the 3
hearing is closed the debtor may file any modification of his pro- 4
posal which shall thereafter be considered the proposal. The hear- 5
ing shall then be adjourned not less than seven days, and if at or 6
before the day to which such or any subsequent adjournment is 7
made the debtor files in court the written assent to the proposal 8
of a majority in number and value of his creditors who have proved 9
their claims if the same be for the payment of not less than fifty 10
per cent to the general creditors, or if less than fifty per cent, 11
of three-fourths in number and value of such creditors, the court 12
shall at the hearing, or at a further adjournment thereof determine 13
whether the composition shall be confirmed, and any creditor may 14
be heard thereon. Any matters which would prevent or avoid a 15
discharge in insolvency may be considered in ascertaining the ex- 16
pediency of confirming the same, but not as an absolute bar thereto. 17
If the only objection thereto relates to the security for deferred 18
payments, other security may then be offered. No claim entitled 19
to priority shall be counted nor shall a creditor whose claim is less 20
than fifty dollars be counted in the number of creditors. 21

Confirmation
of composition.
Effect.
1884, 236, § 9.
1890, 387.
147 Mass. 192.
150 Mass. 353.
155 Mass. 389.
171 Mass. 111.

SECTION 157. If the court finds that the composition has been 1
duly assented to and is consistent with justice and for the interests 2
of the creditors, it shall order the same to be confirmed; and by 3
the same order shall limit the time within which money for cash 4
payments and vouchers and securities for deferred payments shall 5
be deposited in court; and upon such deposit within the time so 6
limited therefor, the judge shall grant to the debtor a certificate of 7
discharge from his debts, which shall be substantially in the form 8
and have the same effect as though obtained by the other proceed- 9
ings in insolvency. It shall not be annulled for a cause which was 10
brought to the notice of the court on the hearing for confirmation, 11
or which was then known to the creditor petitioning to have the 12
same annulled; nor shall it bar the debt of a creditor whose name 13
was fraudulently and wilfully omitted from the debtor's schedule of 14
creditors. But the debt of a creditor omitted therefrom by mistake 15

16 only or want of knowledge, shall be barred and he shall be entitled
17 to and may recover against the debtor the amount of the dividend
18 to which he would have been entitled in the composition proceed-
19 ings.

1 SECTION 158. If there are unsecured claims included in the
2 debtor's schedule of creditors which have not been proved at the
3 time of the deposit, the deposit shall include a dividend at the rate
4 proposed on all such claims computed on the amount set forth in
5 the schedule; and after the expiration of five months and within
6 six months from the time of the first hearing on the debtor's pro-
7 posal for composition, the court shall order a hearing for the proof
8 of such unproved claims, of which notice shall be given in like
9 manner as of the previous hearings; and upon proof and allowance
10 thereof at such hearing, the court shall order dividends to be paid
11 on all debts so proved at the rate allowed on debts formerly proved,
12 and the money deposited on claims then remaining unproved shall
13 then be refunded to the depositor.

Unproved
claims.
1880, 387.
157 Mass. 252.
170 Mass. 466.

1 SECTION 159. Upon the granting of the discharge, the money,
2 vouchers and securities deposited in court shall be paid and deliv-
3 ered by the register upon demand to the persons entitled thereto,
4 and all other property of the debtor shall revert to and revest in
5 him; and the court may order any necessary or proper release or
6 reconveyance thereof by an assignee or trustee to whom the same
7 may have been assigned or conveyed.

Disposition of
property upon
discharge.
1884, 236, § 10.
159 Mass. 190.
170 Mass. 9.

1 SECTION 160. After the expiration of one year from the deposit
2 in court of the money, vouchers and securities, as provided in sec-
3 tion one hundred and fifty-seven, the court may, after notice by mail
4 postpaid, to creditors who have not taken up their dividends, order
5 all such money, vouchers and securities then remaining on deposit
6 in said court, to be paid and transferred to the depositor.

Return of
deposits.
1885, 353, § 5.

1 SECTION 161. If the money for the cash payments and the
2 vouchers and securities for deferred payments are not deposited in
3 court within the time limited by the order of confirmation, the case
4 shall proceed in insolvency, and the register shall deliver to the
5 assignee all money and securities which are the property of the
6 debtor which shall have been deposited in court; and all other
7 securities and vouchers which shall have been so deposited shall be
8 returned by the register to the persons who furnished or deposited
9 the same or be otherwise disposed of as the judge may order. In
10 such case the stay or suspension of other proceedings by reason of
11 the attempted composition shall not affect any rights, and the period
12 of suspension shall be excluded in computing other periods of time
13 provided by the laws relative to insolvency.

Effect of
failure of
composition.
1884, 236, § 11.

1 SECTION 162. The provisions of this chapter shall not release
2 an officer or stockholder of a corporation from any liability under
3 the provisions of sections fifty-eight and fifty-nine of chapter one
4 hundred and ten, but if such corporation applies for a discharge
5 as hereinbefore provided any creditor may, at any time after the
6 filing of the offer in composition, file a bill in equity in behalf

Stockholder's
liability not
affected.
1897, 247, § 2.

of himself and other creditors of the corporation, against it and all persons who were stockholders therein at the time of the filing of the petition in insolvency by or against the corporation, or against all the officers liable for its debts and contracts, for the recovery of the amounts due from the corporation to himself and the other creditors for which the stockholders or officers may be personally liable, by reason of any act or omission on its part or on that of its officers, stating the nature of his claim and the grounds upon which it is expected to charge the stockholders or officers personally. It shall not be necessary to allege or prove a judgment against the corporation or the return of an execution unsatisfied. If the ground upon which it is expected to charge the officers of the corporation is an excess of debts above the capital stock, the extent of such excess shall be taken to be that existing at the time of the filing of the petition in insolvency by or against said corporation.

Effect of composition upon pending action.
1897, 247, § 3.

SECTION 163. If, at the time of the filing of the offer in composition by a corporation, an action is pending against it on behalf of a creditor who would be entitled to enforce a liability against its officers or stockholders under the provisions of chapter one hundred and ten, the plaintiff may change his action into a suit in equity, making parties thereto the stockholders and officers who were such at the time of the filing of the petition in insolvency by or against the corporation, and may proceed thereafter in like manner as provided in the preceding section. If the ground upon which it is expected to charge the officers of the corporation is an excess of debts above the capital stock, the extent of such excess shall be taken to be that existing at the time of the beginning of said action.

Proceedings.
1897, 427, § 5.

SECTION 164. A suit in equity under the provisions of the two preceding sections shall be subject to the provisions of sections sixty-three to sixty-seven, inclusive, of chapter one hundred and ten.

Schedule of officers, etc.
1887, 427, § 4.

SECTION 165. A corporation which makes an offer of composition shall file, at the time of filing the schedules of assets and liabilities, a schedule of all its officers and stockholders who were such at the time of the filing of the petition in insolvency by or against it, with the holdings of stock at such time.

Effect of discharge upon attachments.
1889, 406, § 2.
170 Mass. 179.

SECTION 166. A discharge under the provisions of section one hundred and fifty-seven shall dissolve any attachment on mesne process made not more than four months prior to the time of giving the notice to the creditors of the debtor's proposal of composition.

Amendments and orders.
1884, 236, § 12.

SECTION 167. The court, except as herein otherwise provided, may allow amendments and make appropriate orders, in the course of the proceedings or thereafter, necessary to carry the same into full effect.

Penalty for placing fictitious debt upon schedule.
1884, 236, § 13.

SECTION 168. An insolvent debtor who knowingly places upon his schedule of creditors a false or fictitious debt with intent to deceive or defraud his creditors, or who having notice or knowledge that a person has proved or attempted to prove a false or fic-

5 titious debt against his estate, fails to disclose the same forthwith
6 to the court or who makes a payment or gives or promises an
7 advantage to a creditor with intent thereby to procure his assent
8 to a composition, shall be punished by imprisonment in the state
9 prison for not more than five years or in jail for not more than
10 two years.

1 SECTION 169. A creditor of an insolvent debtor who know-
2 ingly proves a false or fictitious debt against the estate, or receives
3 or procures or attempts to procure a payment or advantage in con-
4 sideration of his assent to a composition, shall be punished by im-
5 prisonment for not more than two years or by a fine of not more
6 than one thousand dollars.

Penalty
for proving
fictitious debt.
1884, 236, § 14.

FEEES AND COSTS.

1 SECTION 170. A debtor's petition for the institution of volun-
2 tary insolvency proceedings shall be received and entered by the
3 register only upon payment to him of twenty-five dollars. A cred-
4 itor's petition for the institution of proceedings against a debtor shall
5 be received and entered by the register only upon payment to him of
6 the amount necessary to defray the expense of publishing the notice
7 of the filing of such petition, but the warrant shall not issue until
8 twenty-five dollars is paid to the register. A proposal by a debtor
9 for composition with his creditors shall not be received or entered
10 by the register after the filing of a creditor's petition for involun-
11 tary proceedings, and before the issuing of a warrant thereon, until
12 twenty-five dollars has been paid to the register.

Fee for receiv-
ing petition,
etc.
1838, 163, § 16.
1856, 284, § 24.
G. S. 118, § 125.
P. S. 157, § 137.
1895, 394, §§ 1, 2.

1 SECTION 171. The register shall, on the first day of January,
2 April, July and October in each year, render an account under
3 oath of all fees so received by him during the three months last
4 preceding, and on or before the tenth day of said months pay over
5 the same to the treasurer and receiver general.

Accounts of
register.
1856, 284, § 24.
G. S. 118, § 126.
1862, 137.
P. S. 157, § 138.
1895, 394, § 3.

1 SECTION 172. In composition cases no fees or compensation
2 shall be payable to the register for giving notices to creditors or
3 for the custody of money, vouchers or securities, or for the pay-
4 ment of dividends.

No fees in
composition
cases, when.
1885, 353, § 4.
1895, 394, § 4.

1 SECTION 173. In all cases in a court of insolvency the messen-
2 ger shall be entitled to the following fees:—for service of the
3 warrant, two dollars; for necessary travel, at the rate of four cents
4 a mile: for each written notice to creditors named in the schedule,
5 ten cents; for the custody of property, publication of notices and
6 other services, the amounts actually incurred and paid and returned
7 by him in an itemized account under oath and approved by the
8 court. For cause and upon a hearing the court may make a fur-
9 ther allowance.

Messenger's
fees.
1838, 163, § 16.
1856, 284, § 24.
G. S. 118, § 125.
P. S. 157, § 137.
1895, 394, § 5.

1 SECTION 174. If an attachment on mesne process has not been
2 dissolved before commencement of proceedings in insolvency, or
3 if such attachment has been dissolved by bond and the claim upon

Costs if
attachment
dissolved.
1841, 124, § 6.
G. S. 118, § 127.

1862, 179, § 5.	which the action was commenced is proved against the estate of the	4
P. S. 157, § 139.	debtor, the plaintiff may also prove the legal fees, costs and ex-	5
1892, 359.	penses of the action and of the custody of the property to the date of	6
135 Mass. 588.	the first meeting, and the amount thereof shall be a privileged debt.	7
147 Mass. 192.		
152 Mass. 596.		

Costs, how	SECTION 175. In matters of insolvency which are contested in	1
paid.	a court of insolvency, the superior court or the supreme judicial	2
1856, 284, §§ 38,	court, said courts may in their discretion award costs to either	3
39.	party to be paid by the other, or to either or both parties to be	4
G. S. 118, §§ 128,	paid out of the estate. If costs are awarded to be paid by one party	5
129.	to the other, said courts, respectively, may issue execution therefor.	6
P. S. 157, §§ 140,		
141.		

VACATING PROCEEDINGS.

Vacating	SECTION 176. Upon petition by a creditor who has proved his	1
proceedings.	claim the court may order the proceedings to be stayed and, after	2
1848, 304, § 13.	notice and a hearing, if no objection is made by the debtor or any	3
G. S. 118, § 130.	such creditor, enter an order vacating all proceedings therein.	4
P. S. 157, § 142.		
3 Gray, 531.		

RETURNS.

Returns by	SECTION 177. Each register shall on or before the tenth day of	1
registers.	each month make a return to the secretary of the commonwealth of	2
1846, 168, § 3.	the name, residence and occupation of each person by or against	3
1851, 327, § 24.	whom, as an insolvent debtor, and of the name of each corporation,	4
G. S. 118, § 131.	the kind of business for which it was organized, the place or places	5
P. S. 157, § 143.	in which its business was principally done, by or against which, as	6
1897, 89.	an insolvent corporation, a petition has been filed in his court	7
	during the month last preceding, with the dates of such petitions.	8
	The secretary shall enter such returns, conveniently for reference,	9
	in a book which shall be open to public inspection.	10

CHAPTER 164.

OF JUDGES AND REGISTERS OF PROBATE AND INSOLVENCY.

SECTIONS 1-9. — Judges.
SECTIONS 10-24. — Registers.
SECTIONS 25, 26. — General Provisions.
SECTIONS 27-32. — Salaries and Fees.
SECTIONS 33-35. — Court Officers.

JUDGES.

Judges.	SECTION 1. There shall be one judge of probate and insolvency	1
1858, 93, § 1.	in each county except in the counties of Suffolk and Middlesex.	2
G. S. 119, § 1.		
	P. S. 158, § 1.	

— in Suffolk	SECTION 2. There shall be two judges of probate and insolvency	1
and Middlesex.	for each of the counties of Suffolk and Middlesex. The senior judge	2
1893, 379.	shall be the first judge of probate and insolvency in each county, to	3
1894, 527, § 1.	whom, and to his successors, all bonds which are required by law to	4

5 be given to the judge of the probate court or of the court of insol-
6 vency for said counties shall be made payable. The probate court
7 and the court of insolvency for said counties may be held by one or
8 both of the judges and, when so held, shall have and exercise all the
9 powers and jurisdiction committed to the respective courts. The
10 judges shall so arrange the performance of their duties as to insure a
11 prompt and punctual discharge thereof. Simultaneous sessions of the
12 courts in said counties may be held if the public convenience so re-
13 quires. Citations, orders of notice and all other processes issued
14 by the register of probate and insolvency for either of said counties
15 shall bear teste of the first judge of said courts, respectively. A
16 deposit or investment which is made in the name of the judge of the
17 probate court or the court of insolvency for either of said counties
18 shall be made in the name of the first judge of the court, and shall
19 be subject to the order of the court.

1 SECTION 3. A judge of probate and insolvency, before entering
2 upon the performance of his official duties, in addition to the oaths
3 prescribed by the constitution, shall take and subscribe an oath that
4 he will faithfully discharge said duties and that he will not during
5 his continuance in office, directly or indirectly, be interested in, or
6 be benefited by, the fees or emoluments which may arise in any suit
7 or matter pending in either of the courts of which he is judge. Such
8 oath shall be filed in the registry of probate of the county for which
9 he is appointed.

Oath of judge.
Const., pt. 2,
c. 6, art. 1.
Amend. const.,
art. 6.
R. S. 83, § 26.
1856, 284, § 16.
1858, 93, §§ 2, 3.
G. S. 119, § 2.
P. S. 158, § 2.

1 SECTION 4. The judges may perform each other's duties when
2 they find it necessary or convenient.

1859, 110, § 1. G. S. 119, § 3. P. S. 158, § 3. 15 Gray, 459.

Judges may
interchange,
etc.

1 SECTION 5. If a judge of probate and insolvency is unable or
2 fails from any cause to perform his duties or any part of them, or
3 if, in his opinion, the court requires the assistance of another judge,
4 or if there is a vacancy in the office of judge of probate and
5 insolvency, his duties, or such of them as he may request, shall be
6 performed in the same county by the judge of probate and insolvency
7 of any other county who may be designated by the judge, or, in
8 case of his failure so to designate, who may be designated by the
9 register of probate and insolvency from time to time as may be
10 necessary: but, unless objection is made by an interested party
11 before the decree is made, any case may be heard and determined
12 out of said county in the performance of such duties by such other
13 judge, who may send his decree to the registry of probate for the
14 county in which the case is pending. Two or more simultaneous
15 sessions of the court may be held, the fact being so stated upon the
16 record.

Assistance of
other judges.
1783, 46, § 3.
1810, 36.
1817, 190, § 5.
R. S. 83, § 15.
1856, 284, § 5.
G. S. 119, § 4.
P. S. 158, § 4.
1892, 337, § 1.
1894, 377, § 1.
1899, 345, § 1.

1 SECTION 6. The register of probate and insolvency shall certify
2 upon his records and to the auditor of the commonwealth the num-
3 ber of days and the dates upon which, and the occasion for which,
4 the duties of the judge of probate and insolvency are performed by
5 such judge of another county under the provisions of the preceding
6 section.

Certification of
amount of
assistance.
1859, 110, § 2.
G. S. 119, § 5.
P. S. 158, § 5.
1892, 337, § 2.
1894, 377, § 2.
1899, 345, § 2.

Compensation.
1892, 337, § 3.
1894, 377, § 3.
1899, 345, § 3.

SECTION 7. The judge who performs any duty under the provisions of section five shall, except as provided in the following section, receive from the commonwealth, in addition to the amount otherwise allowed to him by law, fifteen dollars for each day that he performs such duties. Such compensation, so far as it is for services rendered for any cause, except for such interest as prevents the performance of his duties by the regular judge, shall, for any excess above three per cent of his salary, be deducted from the salary of the judge so assisted.

Bonds to acting judge.
1859, 110, § 3.
G. S. 119, § 5.
P. S. 158, § 5.

SECTION 8. Bonds which are required to be given to the judge shall be given, in case of vacancy in the office of judge, to the acting judge, and to his successors in office, and all business shall be done in his name or in the name of the probate court or the court of insolvency for the county in which the case or matter is pending; but bonds may be approved, and other acts, which are required to be done or certified by the judge, may be approved, done or certified by the acting judge.

Decree out of county.
1898, 131.

SECTION 9. The judge of probate and insolvency may, in cases in which a decree, order or allowance can be made without a hearing, and in all cases after a hearing, make such decree, order or allowance, and approve bonds, at any place in the commonwealth, with the same effect as if so made and approved in their respective counties; and if such judge, under the provisions of section five, acts in a county other than his own, such decrees, orders or allowances may be signed, and bonds approved, outside of the county in which he may have been designated to act. The provisions of this section shall not affect the validity of any decree, order or allowance which was signed or bond which was approved prior to the third day of March in the year eighteen hundred and ninety-eight.

REGISTERS.

Oaths.
Const., pt. 2,
c. 6, art. 1.
Amend. const.,
art. 6.
1817, 190, § 2.
R. S. 83, § 21.
1856, 284, § 12.
1858, 93, § 5.
G. S. 119, § 7.
P. S. 158, § 6.

SECTION 10. Every register of probate and insolvency, before entering upon the performance of his official duties, in addition to the oaths prescribed by the constitution, shall take and subscribe an oath that he will faithfully discharge said duties, and that he will not during his continuance in office, directly or indirectly, be interested in, or be benefited by, the fees or emoluments which may arise in any suit or matter pending in either of the courts of which he is register. Such oath shall be filed in the registry of probate of the county for which he is elected.

Bonds.
1762-3, 24, § 2.
1786, 57, § 2.
R. S. 83, § 21.
1856, 284, § 12.
1857, 15.
1858, 93, §§ 5, 8.
G. S. 119, § 7.
P. S. 158, § 7.

SECTION 11. He shall give bond to the treasurer and receiver general for the faithful performance of his official duties, in a sum not less than one thousand nor more than ten thousand dollars, as may be ordered by the judge, with one or more sureties who shall be approved by him.

Custody of records.
1817, 190, § 2.
R. S. 83, § 22.
1856, 284, § 13.

SECTION 12. The register shall have the care and custody of all books, documents and papers which appertain to the courts of which he is register, or which are deposited with the records of insolvency

4 or filed in the registry of probate, and shall carefully preserve them
 5 and deliver them to his successor. He may, with the approval of
 6 the county commissioners and at the expense of the county, cause
 7 copies of the indexes, or new indexes, to the records which are in
 8 his custody, to be printed and to be sold at a price which shall be
 9 not less than the cost of paper, printing and binding. He shall
 10 perform such other duties which appertain to his office as may be
 11 required by law or prescribed by the judge.

1858, 63, § 5.
 G. S. 119, § 10.
 P. S. 158, § 8.
 1900, 180.

1 SECTION 13. He may at any time receive and place on file pe-
 2 titions and applications to the probate court or the court of insol-
 3 vency, and may issue orders of notice and citations in like manner
 4 and with like effect as if they were issued by the judge; but if the
 5 judge considers that such notice is insufficient, he may order further
 6 notice.

Petitions and
 orders.
 1860, 163.
 1881, 156, § 1.
 P. S. 158, § 9.

1 SECTION 14. He may issue process of attachment and of execu-
 2 tion, and all other processes and all warrants, letters and licenses
 3 which may be necessary to carry into effect any order or decree of
 4 the courts, and they may run into any county and shall be exe-
 5 cuted and obeyed throughout the commonwealth. He may appoint
 6 appraisers to make any inventory which may be required to be
 7 returned to said courts.

Attachment,
 etc.
 1881, 215, § 2.
 1893, 156, § 10.
 1894, 199.

1 SECTION 15. He shall furnish copies of records or other papers
 2 in his custody and shall collect therefor the fees provided by law.

Registers to
 furnish copies.
 1893, 469, § 2.

1 SECTION 16. He shall, on the first Monday of January, April,
 2 July and October, in each year, account for and pay over to the
 3 treasurer and receiver general all fees and compensation which have
 4 been received by him otherwise than by salary.

Accounts.
 1893, 469, § 3.

1 SECTION 17. The judges for the counties of Bristol, Essex, Frank-
 2 lin, Hampden, Hampshire, Middlesex, Norfolk, Suffolk and Worces-
 3 ter may each appoint an assistant register of probate and insolvency
 4 for his county, who shall hold office for three years unless sooner
 5 removed by the judge. Such assistant register in Bristol, Hamp-
 6 den and Hampshire may be a woman. Before entering upon the
 7 performance of his duties, an assistant register shall take the oaths
 8 prescribed by the constitution, and shall give bond to the treasurer
 9 and receiver general for the faithful performance of his official duties,
 10 in a sum not less than five hundred nor more than five thousand
 11 dollars, as may be ordered by the judge, with one or more sureties
 12 who shall be approved by him.

Assistant
 register.
 Const., pt. 2,
 c. 6, art. 1.
 Amend. const.,
 art. 6.
 1858, 93, §§ 6, 8.
 G. S. 119, § 11.
 P. S. 158, § 11.
 1893, 151, § 1.
 1898, 234.
 1899, 191, § 1.
 1900, 144, § 1.

1 SECTION 18. The register of probate and insolvency for the
 2 county of Suffolk may, subject to the approval of the judges of
 3 probate and insolvency for said county, appoint a clerk and may
 4 remove him at pleasure.

Clerk in Suf-
 folk county.
 1878, 119.
 P. S. 158, § 12.

1 SECTION 19. The register shall forthwith report to the secretary
 2 of the commonwealth a vacancy in the office of assistant register and

Notice of
 vacancy in
 office of assist-
 ant.

1880, 130, § 4. the name, residence and date of appointment of the person who may 3
P. S. 158, § 13. have been appointed to fill such vacancy. 4

Assistant register, duties. SECTION 20. An assistant register shall perform his duties 1
1858, 93, §§ 6, 7. under the direction of the register, and shall pay over to him all fees 2
G. S. 119, § 12. and amounts received as such assistant. He may authenticate papers 3
P. S. 158, § 14. and perform such other duties as are not performed by the register. 4
In case of the absence, neglect, removal, resignation or death of the 5
register, the assistant may complete and attest any records which 6
remain unfinished and may act as register until a new register is 7
qualified or until the disability is removed. 8

Inspection of records, etc., by judges. SECTION 21. The judges shall semi-annually inspect the doings 1
1861, 95, § 1. of the registers of their courts, and see that the records and files 2
P. S. 158, § 15. are made up seasonably and kept in good order; and if the records 3
are left incomplete for more than six consecutive months, such 4
neglect, unless caused by illness or casualty, shall be adjudged a 5
forfeiture of the bond of the register. 6

Notice to treasurer of forfeiture of register's bond. SECTION 22. In case of any neglect which causes a forfeiture of 1
1861, 95, § 2. the bond of the register or assistant register, the judge shall forth- 2
P. S. 158, § 16. with give notice thereof in writing to the treasurer and receiver 3
general, who shall thereupon cause the bond to be put in suit; and 4
the amount recovered in such suit shall be applied to the expense of 5
making up the deficient records under the direction of the court in 6
whose records the deficiency exists, and the surplus, if any, shall 7
be carried into the account of such treasurer. 8

Registers, etc., not exempt from actions on bonds. SECTION 23. The provisions of the two preceding sections shall 1
1861, 95, § 3. not exempt registers or assistant registers from an action for any 2
P. S. 158, § 17. other breach of their bond, or from other liability for neglect or 3
misconduct in their office. 4

Temporary register. SECTION 24. If, upon the death, resignation, removal or absence 1
1817, 190, § 2. of the register, there is no assistant register, or if he also is absent, 2
R. S. 83, §§ 23-25. the judge shall appoint a temporary register who shall act until a 3
1856, 173, § 8; register is appointed or elected and qualified, or until the disability 4
284, §§ 14, 15. is removed. Such temporary register shall be sworn before the 5
1858, 93, §§ 2, 3, judge, and a certificate thereof, with his appointment, shall be re- 6
5, 6. corded with the proceedings of each court in which he acts. 7
G. S. 119, §§ 14, 15.
P. S. 158, §§ 19, 20.

GENERAL PROVISIONS.

Judge, register, etc., to be disinterested. SECTION 25. No judge, register or assistant register of probate 1
1727, 3. and insolvency or any person who is employed in the registry of 2
1815, 49. probate and insolvency in any county shall be interested in, or be 3
1817, 190, § 4. benefited by, the fees or emoluments which may arise in any matter 4
R. S. 83, §§ 26, 27. pending before the probate court or court of insolvency of such 5
1856, 284, §§ 16, 17. county; nor shall he act as counsel or attorney, either in or out of 6
1858, 93, §§ 2, 3, court, in any matter pending before said courts or in an appeal there- 7
5. from; nor shall he be appointed executor, administrator, guardian, 8
G. S. 119, §§ 6, 9. commissioner, appraiser or assignee of or upon an estate within the 9
1879, 292, § 1. jurisdiction of such courts; nor shall he be interested in the fees 10
P. S. 158, § 21.
5 Pick. 483.
110 Mass. 189.

11 or emoluments arising from any of said trusts; and no judge shall
12 be retained or employed as counsel or attorney, either in or out of
13 court, in any suit or matter which may depend on or in any way
14 relate to a sentence, decision, warrant, order or decree made or
15 passed by him; nor for or against an executor, administrator or
16 guardian appointed within his jurisdiction, in any action or suit
17 brought by or against the executor, administrator or guardian
18 as such; nor in any action or suit relating to the official conduct
19 of such party; nor for or against a creditor, debtor or assignee,
20 in a cause or matter which arises out of or is connected with any
21 proceedings before him: nor in an appeal in such cause or matter.

1 SECTION 26. If a judge or register of probate desires to be Judge or regis-
2 appointed guardian of his minor child, who is an inhabitant of or ter guardian of
3 resides in the same county, such appointment may be made, and minor child.
4 all subsequent proceedings in regard thereto had, in the probate P. S. 158, § 22.
5 court of the most ancient adjoining county.

SALARIES AND FEES.

1 SECTION 27. Judges, registers and other officers of courts of Salaries.
2 probate shall receive from the commonwealth annual salaries as fol- 1823, 141.
3 lows: — 1856, 284. 1858, 93, §§ 13, 11. G. S. 119, § 16. R. S. 83, §§ 49,
 1864, 298. 1867, 357. P. S. 158, § 23. 1893, 469, § 1. 50.
4 For the county,
5 Of Barnstable, the judge and register each, thirteen hundred dol- Barnstable.
6 lars: 1874, 269.
 1887, 166.
7 Of Berkshire, the judge, twenty-five hundred dollars; the reg- Berkshire.
8 ister, eighteen hundred dollars: 1884, 192.
 1898, 280.
9 Of Bristol, the judge, three thousand dollars; the register, twenty- Bristol.
10 five hundred dollars; and the assistant register, one thousand dol- 1874, 269.
11 lars: 1885, 165.
 1889, 211. 1900, 144, § 1.
12 Of Dukes County, the judge and register each, seven hundred Dukes County.
13 dollars: 1859, 178.
 1885, 318.
14 Of Essex, the judge, forty-five hundred dollars; the register, Essex.
15 thirty-three hundred dollars; and the assistant register, twenty- 1883, 244.
16 three hundred dollars: 1887, 273.
 1900, 328, 408. 1888, 112.
17 Of Franklin, the judge and register each, fifteen hundred dollars; Franklin.
18 and the assistant register, five hundred dollars: 1874, 369.
 1893, 151, § 2.
19 Of Hampden, the judge, three thousand dollars; the register, Hampden.
20 twenty-five hundred dollars; and the assistant register, one thou- 1874, 242.
21 sand dollars: 1887, 253.
 1886, 189. 1894, 352. 1898, 234. 1884, 248.
22 Of Hampshire, the judge and register each, sixteen hundred dol- Hampshire.
23 lars: and the assistant register, six hundred dollars: 1874, 327.
 1899, 191, § 2.
24 Of Middlesex, the judges each, forty-five hundred dollars; the Middlesex.
25 register, four thousand dollars; and the assistant register, twenty- 1882, 129.
26 five hundred dollars: 1885, 184.
 1887, 259.
 1889, 251.
27 Of Nantucket, the judge and register each, nine hundred dol- Nantucket.
28 lars: 1890, 115.
 1901, 485.
29 Of Norfolk, the judge, twenty-eight hundred dollars; the register, Norfolk.
30 twenty-three hundred dollars; and the assistant register, twelve 1871, 360.
31 hundred dollars: 1887, 72.
32 Of Plymouth, the judge, two thousand dollars; the register, Plymouth.
33 eighteen hundred dollars: 1874, 269.
 1886, 183.

Suffolk.
1871, 277.
1878, 119.
1882, 144.

Worcester.
1833, 173.
1885, 275.
1888, 152.
1899, 264.

Of Suffolk, the judges each, five thousand dollars; the register, 34
five thousand dollars; the assistant register, twenty-eight hundred 35
dollars; and the clerk, twelve hundred dollars: 1885, 203. 1891, 91. 36

Of Worcester, the judge, forty-five hundred dollars; the register, 37
three thousand dollars; and the assistant register, twenty-three 38
hundred dollars. 1900, 408. 39

Compensation
for extra cler-
ical assistance.
1879, 292, § 2.
1881, 215, § 1.
P. S. 158, § 24.
1885, 205, § 2.
1896, 151, § 2.
1899, 191, § 2.

SECTION 28. If it is considered necessary by the judge, the 1
register shall be allowed annually an amount not exceeding one- 2
third of his salary for extra clerical assistance actually performed, 3
which shall be paid by the commonwealth. The judges in their 4
respective counties shall audit and approve the accounts of the regis- 5
ter. The provisions of this section shall not apply to the county 6
of Suffolk, nor shall it apply to the counties of Franklin or Hamp- 7
shire so long as a salary is paid to an assistant register therein. 8

Additional
clerical assist-
ance.

SECTION 29. In addition to the amount allowed by the preceding 1
section, registers of probate and insolvency shall be allowed for 2
clerical assistance not more than the following amounts, which shall 3
be paid by the commonwealth or county as hereinafter stated to the 4
persons who actually perform the work: 5

For the county, 6

1889, 136.
1900, 144, § 2.

Of Bristol, two hundred dollars, payable by the commonwealth 7
upon the certificate of the judge of probate and insolvency: 8

1886, 114.
1895, 174.

Of Essex, twenty-five hundred dollars, payable by the common- 9
wealth upon the certificate of the judge of probate and insolvency: 10

1896, 219.

Of Hampden, six hundred dollars, payable by the commonwealth 11
upon the certificate of the register, countersigned by the judge of 12
probate and insolvency: 13

1885, 304.
1890, 192.
1893, 344.
1895, 459.
1898, 332.

Of Middlesex, four thousand dollars, payable by the common- 14
wealth upon the certificate of the judge of probate and insolvency, 15
and two thousand dollars from said county upon the certificate of the 16
register, countersigned by the judge of probate and insolvency: 17

1901, 302.

Of Norfolk, six hundred dollars, payable by the commonwealth 18
upon certificate of the judge of probate and insolvency: 19

1894, 322.

Of Plymouth, five hundred dollars, payable by the commonwealth 20
upon the audit and approval of the accounts of the register therefor 21
by the judge of probate and insolvency: 22

1885, 205, § 1.
1888, 280.
1893, 418.
1892, 230.
1893, 431.
1895, 364.
1897, 317.

Of Suffolk, fifty-one hundred dollars, payable by the common- 23
wealth, and twenty-five hundred dollars and such further amount 24
as the board of aldermen of the city of Boston may by vote approve, 25
payable by said county, all upon the certificate of the register, 26
countersigned by a judge of probate and insolvency: 27

1887, 39.
1889, 209.
1894, 259.
1898, 117.

Of Worcester, thirty-three hundred and fifty dollars, payable by 28
the commonwealth upon the certificate of the register, countersigned 29
by the judge of probate and insolvency. 30

Travelling
expenses.
1896, 316.

SECTION 30. Judges and registers shall receive from their re- 1
spective counties their actual and proper travelling expenses which 2
may be incurred by them in the performance of their official duties 3
in holding and attending court at a place other than that in which 4
the registry of probate is situated, upon an itemized statement of 5
such expenses being certified to, and approved by, the county com- 6
missioners of the respective counties. 7

1 SECTION 31. A temporary register shall be entitled to the same
 2 compensation as the register and shall be paid by him if the ap- Compensation
 3 pointment is caused by his absence; but if the appointment is of temporary
 4 caused by his death, removal or resignation, the temporary register register.
 5 shall be paid by the commonwealth. P. S. 158, § 25. 1817, 130, § 2.
R. S. 83, § 24.
1856, 284, § 14.
1858, 43, § 5.
G. S. 119, § 17.

1 SECTION 32. No judge or register of probate and insolvency Judges, etc.,
 2 shall receive any fee or compensation in addition to his salary for not to receive
 3 holding or attending courts or acting as judge or register in any fees.
 4 county, nor for anything done in his official capacity, except as 1823, 141, § 3.
R. S. 83, § 52.
1856, 284, § 21.
1857, 274, § 2.
1858, 43, §§ 2,
3, 5.
 5 expressly provided by law. G. S. 119, § 18. P. S. 158, § 26.

COURT OFFICERS.

1 SECTION 33. The judges of probate and insolvency for the county Officer in
 2 of Suffolk shall appoint an officer to attend the sessions of the pro- Suffolk.
 3 bate court and court of insolvency, and may at any time, for a cause 1884, 140.
1887, 156.
1894, 66,
1898, 146.
 4 which they consider sufficient, remove him, and may fill any vacancy
 5 caused by removal or otherwise. Such officer shall give bond in the
 6 sum of one thousand dollars for the faithful performance of his
 7 duties payable to the treasurer of the county of Suffolk, with suffi-
 8 cient sureties who shall be approved by a judge of said court.
 9 Such officer may serve the orders, precepts and processes issued by
 10 said courts or by a judge thereof. He shall be paid by the county,
 11 in monthly instalments, a salary of fifteen hundred dollars a year.

1 SECTION 34. In addition to the officers whom the sheriff of the Officer in
 2 county of Middlesex is authorized by section seventy-three of Middlesex.
 3 chapter one hundred and sixty-five to appoint, he may appoint, sub- 1899, 423.
 4 ject to the approval of the judges of probate and insolvency for said
 5 county, an officer who shall serve as a permanent court officer for
 6 attendance at the sessions of the probate court. Such officer shall
 7 give bond in the sum of ten thousand dollars for the faithful per-
 8 formance of his duties, payable to the sheriff of said county with
 9 sureties who shall be approved by either of said judges. He shall
 10 serve the orders, precepts and processes issued by said probate court
 11 or by either judge thereof. He shall receive from the county of
 12 Middlesex an annual salary of seventeen hundred dollars in full
 13 payment for all services performed by him, ten cents a mile for
 14 travel out and home once a week during such attendance, if such
 15 distance exceeds five miles one way, and one hundred dollars,
 16 annually, in addition to his salary, to provide a uniform, which he
 17 shall wear while in attendance on said courts.

1 SECTION 35. The judges of probate and insolvency for the Messenger in
 2 county of Middlesex may appoint a messenger for the courts of Middlesex.
 3 probate and insolvency for said county, may at any time remove 1901, 369.
 4 him for a cause which is by them considered sufficient, and may fill
 5 a vacancy caused by a removal or otherwise. Said messenger shall
 6 wait upon said courts and perform such duties as the judges may
 7 direct, and shall receive from said county an annual salary of one
 8 thousand dollars, payable in equal monthly instalments.

CHAPTER 165.

OF CLERKS, ATTORNEYS AND OTHER OFFICERS OF JUDICIAL COURTS.

SECTIONS 1-38. — Clerks of the Courts.

SECTIONS 39, 40. — Bar Examiners.

SECTIONS 41-51. — Attorneys at Law.

SECTIONS 52-54. — Masters, Referees and Assessors.

SECTIONS 55-60. — Auditors.

SECTION 61. — Reports of Masters and Auditors.

SECTIONS 62-67. — Reporter of Decisions.

SECTIONS 68-79. — Deputy Sheriffs and Other Court Officers.

SECTIONS 80-88. — Stenographers.

CLERKS OF THE COURTS.

Clerk of court
for common-
wealth.
1859, 196, § 40.
G. S. 121, §§ 1, 2.
P. S. 159, §§ 1, 2.

SECTION 1. The justices of the supreme judicial court or a majority of them shall appoint the clerk of the court for the commonwealth for a term of five years from the date of his appointment, and may appoint an assistant clerk of said court for a term of three years from the first day of January next after his appointment; and may remove them.

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Duties of clerk.
1859, 196, §§ 42,
43.
G. S. 121, §§ 3-5.
P. S. 159, §§ 3-5.

SECTION 2. The clerk shall attend all sessions of the court, preserve all the files and papers thereof, keep a docket record of all questions transferred, and of all petitions, complaints or other processes presented to the court, and enter thereon the name of the parties in full and the name of the counsel who appear in behalf of either party, and a brief description of the nature of the action or proceeding. He shall also record thereon accurate minutes of all orders, decrees or directions of the court in each case, transmit forthwith to the clerks of courts in the several counties all rescripts which are made or ordered by the court and the papers which belong to the supreme judicial court or the superior court in each case, and receive and keep safely all papers transmitted to him by the clerks of the courts. He shall make copies of all papers on file in said court and of the docket record thereof, if desired, and certify them under the seal of the court. He shall issue such writs or other processes as the court orders, shall charge the fees provided by law for like services for clerks of courts, and, if no express fee is provided, he shall receive a fair compensation for the services required of him in analogy to like services for which a compensation is fixed by law. He shall annually, before the last Wednesday of December, account with and pay over to the treasurer and receiver general all fees which have been received by him.

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Clerks to be
clerks of
county com-
missioners.

SECTION 3. The clerk and assistant clerks of the courts shall be clerk and assistant clerks of the county commissioners.

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1857, 1.

G. S. 121, § 6.

1860, 11.

P. S. 159, § 6.

Assistant
clerks.
1850, 236, § 1.
1851, 38, § 1.
1855, 449, § 2.

SECTION 4. The justices of the supreme judicial court or a majority of them shall appoint an assistant clerk of the courts for each of the counties of Bristol, Essex, Hampden, Middlesex, Nor-

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4 folk and Worcester, and of the supreme judicial court in the county 1856, 37, § 1.
 5 of Suffolk, for a term of three years from the date of his appoint- 1859, 196, § 9.
 6 ment, and may remove him. The assistant clerk for the county of G. S. 121, § 8.
 7 Hampden may be a woman. 1867, 295, § 4.
 1881, 266.

P. S. 159, § 8.

1897, 220.

1 SECTION 5. The justices of the supreme judicial court or a ma- Assistant
 2 jority of them may appoint, for a term of three years from the date clerks in
 3 of their appointments, a second assistant clerk of the courts for Essex and
 4 the county of Essex and a second and a third assistant clerk of the Middlesex.
 5 courts for the county of Middlesex. 1873, 181.
 P. S. 159, § 9.
 1889, 11, 444.
 1896, 218.

1 SECTION 6. The justices of the superior court or a majority of — of superior
 2 them may appoint, for a term of three years from the date of their court in Suf-
 3 appointments, nine assistant clerks of said court for civil business folk.
 4 in the county of Suffolk, one of whom shall perform such duties as 1888, 153.
 5 may be required of him as clerk in equity proceedings in said 1889, 50.
 6 court for equity business in said county. 1892, 87.
 1895, 251, 393,
 480.
 1897, 334.
 1899, 377.

1 SECTION 7. The clerks of the courts for the counties of Norfolk — in Norfolk,
 2 and Worcester may each appoint a second assistant clerk, and the Suffolk and
 3 clerk of the superior court for criminal business for the county of Worcester.
 4 Suffolk and the clerks of the courts for the counties which have 1873, 181.
 5 no permanent second assistant clerks may appoint assistant clerks P. S. 159, § 9.
 6 pro tempore, or for a term of one year, subject to removal by the
 7 court or by the clerk.

1 SECTION 8. If, by reason of illness or other cause, the clerk of Clerks pro tem-
 2 the courts in any county, or of the supreme judicial court in the pore.
 3 county of Suffolk, is unable to perform the duties of his office, and 1851, 158, §§ 1, 3.
 4 there is no assistant clerk or he also is unable to perform the duties 1859, 196, § 9.
 5 of his office, the justices of the supreme judicial court or a majority G. S. 121, § 9.
 6 of them may appoint a clerk pro tempore, who shall perform the P. S. 159, § 10.
 7 duties of the clerk or assistant clerk resumes his
 8 duties. The justices of the superior court may in like manner ap-
 9 point a clerk pro tempore if a clerk and assistant clerk of that court
 10 in the county of Suffolk cannot perform the duties of the office.
 11 When, after any such temporary appointment, the clerk or assistant
 12 clerk resumes his duties, he shall make a record of that fact, with
 13 the date, under his signature, in the latest book of records in each
 14 of the courts.

1 SECTION 9. If an assistant clerk of the courts is unable to per- Assistant
 2 form the duties of his office, the justices of the court who are clerks pro
 3 authorized to appoint him or a majority of them may appoint an tempore.
 4 assistant clerk pro tempore, who shall perform the duties of that 1863, 64, § 1.
 5 office until the assistant clerk resumes his duties. P. S. 159, § 11.

1 SECTION 10. If, at a sitting of any court, neither the clerk nor Appointment
 2 assistant clerk is present, the court may appoint a clerk pro tem- by court of
 3 who shall perform the duties of the office during the sitting or until clerk pro tem-
 4 the clerk or assistant clerk resumes his duties, unless an appoint- pore.
 5 under one of the preceding sections is sooner made or unless a new 1815, 37.
 6 clerk has been elected and has qualified. R. S. 81, § 14;
 88, § 13.
 G. S. 121, § 10.
 P. S. 159, § 12.

Clerks to be sworn.

1782, 9, § 5.
1796, 95, § 2.
1799, 81, § 1.
1811, 8, § 3.
1815, 37.
R. S. 86, § 8;
88, §§ 4, 14.

SECTION 11. The clerk, assistant clerk, clerk pro tempore and assistant clerk pro tempore of a court shall be sworn before a justice thereof, who shall, upon administering the oaths of office, forthwith make return of such act, with the date thereof, to the secretary of the commonwealth.

1850, 236, § 1.
1851, 38, § 1; 158, § 2.
1856, 37, § 1.

1859, 196, §§ 40, 41.
G. S. 121, § 11.
1863, 64, § 2.

P. S. 159, § 13.
1894, 228.

Bonds of clerks.

1762, 3; 24, § 1.
1786, 57, § 1.
1811, 8, § 3.
1821, 23, § 3.
R. S. 88, § 3.
1850, 236, § 1.
1851, 38, § 1;
158, § 2.
1856, 37, § 3.
1859, 196, § 41.
G. S. 121, § 12.
1863, 64, § 2.
P. S. 159, § 14.

SECTION 12. The clerk and assistant clerk of the supreme judicial court for the commonwealth shall, before entering upon the performance of his duties, each give bond in the sum of two thousand dollars for the faithful performance of his official duties, payable to the treasurer and receiver general, with sufficient surety or sureties who shall be approved by the court. Each clerk, assistant clerk, and each assistant clerk pro tempore who is appointed under the provisions of section nine, shall give bond in like manner to the county treasurer, in a sum not less than five hundred nor more than two thousand dollars, to be determined by the court; and each clerk pro tempore who is appointed under the provisions of section eight shall give bond in like manner, if required by the court.

Notice to secretary of vacancy in office of assistant.

1880, 139, § 3.
P. S. 159, § 15.

SECTION 13. Each clerk shall forthwith report to the secretary of the commonwealth a vacancy in the office of assistant clerk, and shall report the name and residence of the person who is appointed to fill such vacancy, and the date of the expiration of the term of service.

General duties of clerks.

1782, 9, § 5.
1786, 57.
1811, 8, § 1.
1830, 129, § 2.
R. S. 88, § 5.
G. S. 121, § 13.
P. S. 159, § 16.

SECTION 14. The clerks shall attend all the courts of which they are clerks when held in their respective counties, and the sessions of the county commissioners, and shall record their proceedings; and shall have the care and custody of all the records, books and papers which appertain to, or are filed or deposited in, their respective offices.

— of clerk of supreme judicial court in Suffolk.

1887, 291, § 2.

SECTION 15. The clerk of the supreme judicial court for the county of Suffolk shall act as clerk of the supreme judicial court when sitting in Boston for the hearing of cases from any county other than Suffolk, except when sitting as a full court, and for such purposes as the court may order.

— of clerk of superior court in Suffolk.

1896, 413.

SECTION 16. The clerk of the superior court for civil business in the county of Suffolk, or such assistant clerk of said court as the justices thereof or a majority of them may, from time to time, designate for such duty, shall act as clerk of said court when sitting in Boston for the hearing of cases from any county other than Suffolk, and for such purposes as the court may order.

Forwarding exceptions to attorney general.

1890, 374.
1895, 372.

SECTION 17. The clerks shall cause one or more copies of all appeals, bills of exceptions and reports of cases in which the attorney general appears for the commonwealth to be printed and forwarded to him at Boston as soon as may be after they have been allowed and filed.

1 SECTION 18. When a rescript is filed in a case or proceeding in
2 the supreme judicial court or the superior court, the clerk of such
3 court shall forthwith give notice thereof to an attorney of record of
4 each party, and transmit a copy of such rescript to the reporter of
5 decisions.

Notice of
rescript.
1869, 74.
P. S. 153, § 17.

1 SECTION 19. When judgment is entered by the superior court
2 upon a demurrer, or upon a case stated, or when a decision is ren-
3 dered in an action which is heard without a jury, the clerk shall
4 give notice thereof to the parties or to their attorneys.

Notice of
judgment.
1879, 4.
P. S. 153, § 9.
1899, 357.

1 SECTION 20. A fac-simile of the signature of the clerk of any
2 court in the commonwealth, imprinted by him upon any writ, sum-
3 mons, order of notice or order of attachment, except executions,
4 shall have the same validity as his written signature.

Fac-simile of
signature.
1885, 321.
1886, 13.

1 SECTION 21. The name of an assistant clerk of any court,
2 followed by the designation "assistant clerk", shall be a sufficient
3 official signature.

Signature of
assistant clerk.
1889, 215.
1895, 251.
1896, 413.

1 SECTION 22. The clerk of the courts may issue any order of
2 notice upon any petition or other proceeding at law or in equity
3 which might be issued by the court: but the court or a justice
4 thereof may cause additional notice to be given.

Clerks may
issue orders of
notice.
1873, 259.
P. S. 159, § 17.

1 SECTION 23. The clerks shall keep an alphabetical list of the
2 names of all the parties to every action or judgment which is
3 recorded in the records and a reference to the book and page where
4 it is recorded; and, if there are two or more plaintiffs or defendants,
5 the name of each and a like reference shall be inserted in its appro-
6 priate place in the alphabetical list.

Alphabetical
list of parties.
1786, 57, §§ 1, 2.
R. S. 88, § 7.
G. S. 121, § 14.
P. S. 159, § 18.

1 SECTION 24. Clerks of courts, or, in the county of Suffolk, the
2 clerk of the superior court for civil business, shall receive and safely
3 keep the dockets, records and other official papers of trial justices
4 which may be deposited in their offices under the provisions of sec-
5 tion sixty-one of chapter one hundred and sixty-one, and shall
6 make and certify copies thereof which shall have the same effect as
7 if certified by trial justices. They shall be allowed the same fees
8 for making such copies as are allowed to them in similar cases.

Preservation
of records of
trial justices.
1888, 211, § 6.

1 SECTION 25. The supreme judicial court may, by general rule or
2 special order, direct what portion of the papers in causes which are
3 entered in said court or in the superior court shall be extended upon
4 the records after final judgment or otherwise.

Extension of
papers on
records.
1879, 268.
P. S. 159, § 19.

1 SECTION 26. The clerks of the courts in the several counties
2 and of the supreme judicial court and the superior court in the
3 county of Suffolk shall at the first sitting in each year of the su-
4 preme judicial court in their counties exhibit their latest books of
5 records to a justice of the court, who shall cause errors and defects
6 therein to be corrected.

Clerk to ex-
hibit records.
R. S. 88, § 11.
G. S. 121, § 15.
P. S. 159, § 20.
16 Mass. 382.

Justices to inspect records.
1762, 3; 24, § 4.
1786, 57, § 4.
R. S. 88, § 8.
G. S. 121, § 16.
P. S. 159, § 21.

SECTION 27. The justices of the several courts shall inspect the doings of the clerks from time to time, and shall see that the records are made up seasonably and kept in good order; and, if the records are left incomplete for more than six consecutive months, such neglect, unless caused by illness or casualty, shall be adjudged a forfeiture of the bond of the clerk.

Forfeiture of bond.
1762, 3; 24, § 4.
1786, 57, § 4.
R. S. 88, §§ 9, 10.
G. S. 121, §§ 17, 18.
P. S. 159, §§ 22, 23.

SECTION 28. In case of any neglect which causes a forfeiture of the bond of a clerk or assistant clerk, the justices shall forthwith give notice thereof in writing to the treasurer who has the custody thereof, who shall thereupon cause suit to be brought thereon. The amount recovered in such suit shall be applied to the expense of making up the deficient records under the direction of the court in whose records the deficiency exists, and the surplus, if any, shall be carried into the account of such treasurer.

Liability for other breaches.
R. S. 88, § 12.
G. S. 121, § 19.
P. S. 159, § 24.

SECTION 29. The provisions of the two preceding sections shall not exempt a clerk or assistant clerk from an action for any other breach of the condition of his bond, or from his liability in any other way or to any party for neglect or misconduct in his office.

Duties of assistant clerk.
1850, 236, § 2.
1851, 38, § 2.
1856, 37, § 2.
G. S. 121, §§ 20, 21.
1873, 181, § 1.
P. S. 159, §§ 9, 25, 26.
13 Gray, 74.

SECTION 30. Each assistant clerk shall, under the direction of the clerk, perform any of the duties of the clerk and shall pay over to him all fees and amounts received as such assistant. In the absence or upon the resignation, death or removal of the clerk, the assistant clerk shall perform his duties, under the direction of the court, until he returns or until a clerk is elected or appointed and has qualified, and, upon the death, removal or resignation of the clerk, the assistant clerk shall account with, and pay over the money in his hands to, the officer with whom the clerk is by law required to account.

Clerk to account for fees, etc.
1811, 8, § 2.
1813, 77, § 2.
1820, 84, § 1.
1830, 129, § 3.
1835, 124, § 2.
R. S. 88, § 15.
G. S. 121, § 22.
1879, 300, § 1.
P. S. 159, § 27.
1887, 291, § 1.
1888, 257, § 4.
1891, 236.

SECTION 31. The clerks of the courts in the several counties, and of the supreme judicial court and the superior court in the county of Suffolk, shall keep a cash book, which shall be county property and shall be and remain a part of the records of the courts, in which they shall keep accounts of all fees received by them for their official acts and services, including fees for copies which they are not required by law to furnish, fees and money in proceedings relative to naturalization or for naturalization certificates, and all fees and money of whatever description or character received by them, or by any assistant or other person in their offices or employment, for any acts done or services rendered in connection with their said offices, and shall on or before the tenth day of each month pay over to the treasurer of the county, or to such other officer as is entitled to receive them, all fees received during the preceding calendar month, and shall render to him an account thereof under oath.

— for unclaimed funds.
1890, 330.

SECTION 32. Clerks of courts who have in their custody money or dividends of an insolvent savings bank or insurance company whose affairs have been wound up by the courts of which they are clerks, which money or dividends have remained unclaimed for more than ten years after the order of final settlement by the court, shall, after deducting all amounts due to themselves, to the county or to

7 the commonwealth for fees or expenses, pay over the balance to
8 the treasurer and receiver general and file with him a schedule of the
9 names and residences, so far as known to them or shown by the
10 record, of the parties who are entitled thereto. The fees and ex-
11 penses so deducted shall be audited and adjusted by the controller
12 of county accounts and paid forthwith to the persons who are entitled
13 thereto. After such payment of fees and expenses, and of the pay-
14 ment of the balance to the treasurer and receiver general, the liability
15 of clerks for such money and dividends shall cease. The treasurer
16 and receiver general shall hold such funds in trust for two years;
17 and if they are not paid over by him within that time to the persons
18 who are entitled thereto, upon proper demand and satisfactory
19 evidence of the identity of the claimant and of the justice of the
20 claim, they shall escheat to the commonwealth.

1 SECTION 33. The clerk of the court for the commonwealth shall
2 receive from the commonwealth an annual salary of three thousand
3 dollars, and five hundred dollars a year for clerk hire, and the assist-
4 ant clerk shall receive from the commonwealth an annual salary of
5 fifteen hundred dollars.

P. S. 159, §§ 5, 31.

1894, 136.

Salary of
clerk, etc., for
common-
wealth.
1859, 136, §§ 40,
43.
G. S. 121, §§ 5,
26.

1 SECTION 34. The annual salaries of the clerks of the courts shall,
2 except as herein otherwise provided, be payable in monthly instal-
3 ments by the respective counties, and shall be as follows:— For the
4 county of Barnstable, twelve hundred and fifty dollars; Berkshire,
5 twenty-eight hundred dollars; Bristol, four thousand dollars; Dukes
6 County, six hundred dollars; Essex, fifty-two hundred dollars;
7 Franklin, eighteen hundred dollars; Hampden, thirty-five hundred
8 dollars; Hampshire, twenty-three hundred dollars; Middlesex, six
9 thousand dollars; Nantucket, six hundred dollars; Norfolk, twenty-
10 eight hundred dollars; Plymouth, two thousand dollars; Worcester,
11 fifty-two hundred dollars; Suffolk, the clerk of the supreme judicial
12 court, sixty-five hundred dollars, of which fifteen hundred dollars
13 shall be paid by the commonwealth; the clerk of the superior court
14 for civil business, sixty-five hundred dollars; and of the superior
15 court for criminal business, six thousand dollars.

Salaries of
clerks.
1830, 129, § 4.
1833, 170.
R. S. 88, §§ 16,
17.
1857, 272.
G. S. 121, § 24.
1867, 295, § 2.
1873, 309.
1874, 42, 268.
P. S. 159, § 29.
1887, 112; 291,
§§ 1, 2.
1888, 257, § 1.
1892, 95.

1 SECTION 35. The annual salaries of assistant clerks of the courts,
2 payable in monthly instalments by the respective counties, shall be
3 as follows:—

4 In the county of Suffolk, the assistant clerk of the supreme judi-
5 cial court, twenty-five hundred dollars; of the superior court for
6 civil business, the first assistant clerk and the assistant clerk for
7 equity business, three thousand dollars each, and the second, third,
8 fourth, fifth, sixth, seventh and eighth assistant clerks, twenty-five
9 hundred dollars each; Bristol, the assistant clerk, eighteen hundred
10 dollars and his travelling expenses; Essex, the first assistant clerk,
11 twenty-six hundred dollars and the second assistant clerk, two
12 thousand dollars; Hampden, the assistant clerk, thirteen hundred
13 dollars; Middlesex, the first assistant clerk, twenty-six hundred dol-
14 lars, the second assistant clerk, twenty-five hundred dollars and the
15 third assistant clerk, two thousand dollars; Norfolk, the assistant
16 clerk, eighteen hundred dollars; Worcester, the assistant clerk,
17 twenty-three hundred dollars.

1899, 377.

1900, 329.

1901, 510.

— of assistant
clerks.
1850, 236.
1852, 200, 267.
1854, 215.
1856, 37, § 1.
G. S. 121, § 26.
1865, 209.
1867, 295, § 5.
1870, 336.
1871, 203.
1872, 142, 307,
334, 333.
1877, 17, § 1.
1881, 232, 266.
P. S. 159, § 31.
1885, 250.
1887, 190.
1888, 153.
1889, 11, 50,
441.
1890, 201.
1891, 92.
1892, 87, 187.
1893, 153, 190.
1895, 251, 393,
480.
1896, 218.
1897, 220, 334.
1898, 376, 518.

Salaries of clerk and assistant clerk pro tempore.
R. S. 88, § 14.
G. S. 121, § 27.
1860, 191, § 9.
1863, 64, § 2.
P. S. 159, § 32.

SECTION 36. Each clerk pro tempore shall be paid by the clerk for whom he is acting such compensation as the court appointing him may determine. Each assistant clerk pro tempore who is appointed under the provisions of section nine shall receive from the county the same salary as the assistant clerk for whom he is acting, and the amount so paid shall be deducted from the salary of such assistant clerk.

Salaries to be in full compensation.
1888, 257, § 2.

SECTION 37. The annual salaries of clerks shall be in full compensation for all services rendered by them in the civil or criminal courts, to the county commissioners, in making any returns required by law or in the performance of any other official duty except for such clerical assistance as may be allowed under the provisions of the following section.

Extra clerical assistance.
1873, 181.
1879, 300, § 4.
P. S. 159, §§ 9, 33.
1898, 238.
1899, 350.
[1 Op. A. G. 467.]

SECTION 38. Upon the certificate of the clerk of the courts in the several counties, or of the clerk of the supreme judicial court or the superior court in the county of Suffolk, that extra clerical assistance was actually performed and was necessary, stating the names of the persons by whom it was performed and the time occupied, he shall be allowed such amounts as the county commissioners, in a writing signed by them, or, in the county of Suffolk, the board of aldermen of the city of Boston, by vote, approve. Said amounts shall be paid by the county monthly to the person or persons employed, including assistants appointed under the provisions of section seven.

BAR EXAMINERS.

Bar examiners.
1897, 508, § 1.

SECTION 39. There shall be a board of bar examiners consisting of five persons, who shall reside in different counties, one of whom shall annually be appointed by the justices of the supreme judicial court for a term of five years from the first day of October in the year of his appointment, and who may be removed by them. Such justices may fill any vacancy which occurs in the board.

Duties of board.
1897, 508, § 3.
1898, 312.

SECTION 40. Said board shall determine the time and place of all examinations for admission to the bar, conduct the same and may, subject to the approval of the supreme judicial court, make rules therefor. The members shall receive from the fees received under the provisions of the following section such compensation as the justices of the supreme judicial court, or a majority of them, may allow, and from the commonwealth, such amount for the expenses of the board as may be certified by its chairman and approved by a justice of the supreme judicial court.

ATTORNEYS AT LAW.

Attorneys at law.
1785, 23, § 1.
1795, 89, § 4.
R. S. 88, §§ 19, 20, 23.
1852, 154.
G. S. 121, §§ 28, 29, 32.
1876, 197.
P. S. 159, §§ 34, 37.

SECTION 41. A citizen of this commonwealth, or an alien who resides in this commonwealth and has made the primary declaration of his intention to become a citizen of the United States, including women, may, if of the age of twenty-one years, file a petition in the supreme judicial court or in the superior court to be examined for admission as an attorney, whereupon, unless the court otherwise orders, the petition may be referred to the board of bar examiners

8 to ascertain his acquirements and qualifications. If the board re-
 9 ports that the petitioner is of good moral character and recommends
 10 his admission, he may be admitted unless the court otherwise deter-
 11 mines, and thereafter may practise in all the courts in the common-
 12 wealth. If the court makes an order relative to a petition for
 13 admission, the petitioner shall be admitted in accordance there-
 14 with. The petitioner shall pay to the clerk a fee of ten dollars
 15 upon the entry of his petition, and a further fee of five dollars upon
 16 the entry of a subsequent petition by him. Such fees shall be paid
 17 over by the clerk to the treasurer and receiver general. The peti-
 18 tioner shall also pay a fee of five dollars for admission to the bar,
 19 which shall be paid over by the clerk to the county treasurer.

1882, 139.
 1888, 257, § 5.
 1897, 508, § 2.
 1898, 384.
 10 Met. 243.
 131 Mass. 376.

1 SECTION 42. Whoever is admitted as an attorney shall, in open
 2 court, take and subscribe the oaths to support the constitution of
 3 the United States and of this commonwealth, and the following
 4 oath of office shall be administered to and subscribed by him : —

Oath of office.
 Amend. const.,
 art. 6.
 1701-2, 7, § 2.
 1785, 23, § 1.
 R. S. 88, §§ 21,
 22.
 G. S. 121, §§ 30,
 31.
 P. S. 159, §§ 35,
 36.

You [repeat the name] solemnly swear that you will do no falsehood, nor
 consent to the doing of any in court; you will not wittingly or willingly pro-
 mote or sue any false, groundless or unlawful suit, nor give aid or consent to
 the same; you will delay no man for lucre or malice; but you will conduct
 yourself in the office of an attorney within the courts according to the best of
 your knowledge and discretion, and with all good fidelity as well to the courts
 as your clients. So help you God.

1 SECTION 43. A person who has been admitted as an attorney or
 2 counsellor of the highest judicial court of any other state of which
 3 he was an inhabitant, and who subsequently becomes a citizen of
 4 this commonwealth, may be admitted to practise here upon the
 5 production of satisfactory evidence of his good moral character and
 6 his professional qualifications.

Attorneys
 from other
 states.
 R. S. 88, § 24.
 G. S. 121, § 33.
 P. S. 159, § 38.

1 SECTION 44. An attorney may be removed by the supreme
 2 judicial court or the superior court for deceit, malpractice or other
 3 gross misconduct, and shall also be liable in damages to the person
 4 injured thereby, and to such other punishment as may be provided
 5 by law; and the expenses and costs of the inquiry and proceedings
 6 in either court for the removal of an attorney shall be paid as in
 7 criminal prosecutions in the superior court.

Removal.
 R. S. 88, § 25.
 G. S. 121, § 34.
 P. S. 159, § 39.
 11 Allen, 472,
 473.
 126 Mass. 222.
 168 Mass. 169.

1 SECTION 45. Whoever has been so removed and continues there-
 2 after to practise law or to receive any fee for his services as an
 3 attorney at law rendered after such removal, or who holds himself
 4 out, or who represents or advertises himself as, an attorney or coun-
 5 sellor at law, and whoever, not having been admitted to practise as
 6 an attorney at law in accordance with the provisions of this chap-
 7 ter, represents himself to be an attorney or counsellor at law, or
 8 to be lawfully qualified to practise in the courts of this common-
 9 wealth, by means of a sign, business card, letterhead or otherwise,
 10 shall, upon a first conviction, be punished by a fine of not more
 11 than one hundred dollars or by imprisonment for not more than six
 12 months, and, upon any subsequent conviction, by a fine of not
 13 more than five hundred dollars or by imprisonment for not more
 14 than one year.

Penalties on
 disbarred
 attorneys.
 1891, 418.

Parties may
manage their
own suits.
1701-2, 7, § 1.
1708-9, 3, § 2.
1714, 3, § 2.
1785, 23, § 2.

SECTION 46. Parties may manage, prosecute or defend their own suits personally, and by such attorneys as they may engage ; but not more than two persons for each party shall, without permission of the court, be allowed to manage any case therein.

1789, 58.

R. S. 88, § 26.

G. S. 121, § 35.

P. S. 159, § 40.

Persons
specially
authorized,
etc.
1789, 58.
R. S. 88, § 27.
G. S. 121, § 36.
1865, 81.
P. S. 159, § 41.

SECTION 47. Any person of good moral character, unless he has been removed from practice as an attorney under the provisions of section forty-four, may manage, prosecute or defend a suit if he is specially authorized by the party for whom he appears, in writing or by personal nomination in open court.

Lien for fees.
1810, 84.
1830, 124.
R. S. 88, § 28.
G. S. 121, § 37.
P. S. 159, § 42.
5 Mass. 309.
11 Mass. 236.
13 Mass. 525.
4 Gray, 357.

SECTION 48. An attorney who is lawfully possessed of an execution, or who has prosecuted a suit to final judgment in favor of his client, shall have a lien thereon for the amount of his fees and disbursements in the cause, but the provisions of this section shall not prevent the payment of the execution or judgment to the judgment creditor by a person who has no notice of the lien.

103 Mass. 33.

176 Mass. 162.

Penalty for not
paying over to
client.
1859, 166, § 1.
G. S. 121, § 38.
P. S. 159, § 43.

SECTION 49. An attorney at law who unreasonably neglects to pay over money which has been collected by him for and in behalf of a client, when demanded by the client, shall forfeit to such client five times the lawful interest of the money from the time of the demand.

Attorney not
to act in suit
previously de-
cided by him.
1705-6, 7, § 2.
1815, 49, § 1.
R. S. 89, § 8.

SECTION 50. No person shall be employed or allowed to appear as attorney before a court in any proceeding, civil or criminal, which shall have been previously determined before himself as a judge of any court or as a trial justice.

G. S. 121, § 39.

P. S. 159, § 44.

1884, 170.

Sheriff, etc.,
not to act as
attorney.
1736-7, 3.
1742-3, 25.
1758-9, 14.
1783, 44, § 3.
1822, 20.
R. S. 14, §§ 79,
80; 88, §§ 29, 30.
G. S. 17, § 64;
121, § 40.
P. S. 159, § 45.
6 Pick. 483.

SECTION 51. A sheriff, deputy sheriff or constable, who appears in a court or before a trial justice as attorney for any party to a suit, or who draws, makes or fills up a writ, declaration, plea or process for such party, or who, with intent to procure himself to be employed in the collection of a demand, or in any manner to make gain or profit therefrom, advises, counsels or encourages a person, directly or indirectly, to commence a suit or process, shall forfeit fifty dollars.

MASTERS, REFEREES AND ASSESSORS.

Masters in
chancery.
1826, 109, § 4.
R. S. 88, §§ 31,
32.
1838, 162.
1844, 9, 173.
1845, 22.
1848, 277.
G. S. 121, § 41.
1868, 185.
1873, 365.
1874, 1.

SECTION 52. The governor, with the advice and consent of the council, shall, as vacancies occur, appoint masters in chancery so that the number thereof in the several counties shall be eleven in Suffolk, nine in Essex, seven in Middlesex, seven in Worcester and not more than five in any other county. They shall be sworn, and shall hold their offices for a term of five years, unless sooner removed by the governor and council.

1876, 13.

1879, 142.

P. S. 159, § 46.

131 Mass. 204.

Completion of
business if
commission
expires.
1844, 138.

SECTION 53. A master may complete any unfinished proceedings and processes pending before him or commenced under his direction notwithstanding the expiration of his commission.

G. S. 121, § 45.

P. S. 159, § 50.

SECTION 54. The supreme judicial court and the superior court shall award reasonable compensation to commissioners, assessors, referees, masters in chancery and special masters, for duties performed under the direction of said courts, and to arbitrators appointed under the provisions of chapter one hundred and ninety-four upon whose awards judgment is entered, which shall be paid by the counties in which they are appointed.

Compensation.
1883, 216.
1886, 51.
1887, 289.
1889, 458.
1901, 366.

AUDITORS.

SECTION 55. When a civil action is at issue, the supreme judicial court or the superior court, in its discretion, and a police, district or municipal court, if both parties assent thereto in writing, may appoint one or more auditors to hear the parties, examine their vouchers and evidence, state accounts and report upon such matters therein as may be ordered by the court. The report shall be prima facie evidence upon such matters only as are expressly embraced in the order.

Auditors.
1817, 142.
R. S. 96, §§ 25, 30.
1856, 202.
G. S. 121, § 46.
1863, 197, § 1.
P. S. 159, § 51.
11 Mel. 297.
13 Gray, 150.
15 Gray, 351.
16 Gray, 396.
1 Allen, 53.
9 Allen, 181, 502.

117 Mass. 167.	100 Mass. 193.	112 Mass. 320.	115 Mass. 44.
122 Mass. 505, 522.	126 Mass. 21.	129 Mass. 299.	141 Mass. 304.
	127 Mass. 530.	133 Mass. 548.	150 Mass. 535.

SECTION 56. After any account of an executor, administrator, guardian, trustee or other person who is required by law to render an account in the probate court has been filed therein, the judge of said court may, before approving it, appoint one or more auditors to hear the parties, examine vouchers and evidence and report upon the same to the court. The report shall be prima facie evidence upon such matters as are expressly referred to such auditors.

Appointment in probate court.
1889, 311.

SECTION 57. The auditors shall give notice to the parties of the time and place appointed for their meeting, and may adjourn from time to time as may be necessary. If there is more than one auditor, all shall meet and hear the cause, but a report may be made by a majority.

Notice to parties.
R. S. 96, §§ 26, 27.
G. S. 121, §§ 47, 48.

P. S. 159, §§ 52, 53. 15 Gray, 351.

SECTION 58. The court may, for cause, discharge the auditors and appoint others, and may recommit the report for revision or further examination to the same or to other auditors.

Discharge by court.
R. S. 96, § 29.
G. S. 121, § 49.

P. S. 159, § 54. 4 Pick. 283. 100 Mass. 153. 132 Mass. 489.

SECTION 59. The court in which a cause is pending may, upon application of either party, appoint a day certain for the hearing thereof before the auditor. The hearing shall be had upon the day appointed, and shall proceed, unless the parties otherwise agree or the auditor otherwise orders, from day to day until the conclusion thereof. If either party neglects to appear at the time appointed for such hearing or at any adjournment thereof, without good cause, or if at such hearing either party wilfully refuses to produce in good faith the testimony relied upon by him, the auditor may report such neglect or refusal to the court, which may thereupon enter a default or a nonsuit against such party.

Hearings before auditors.
1900, 418, § 1.

SECTION 60. The court shall award reasonable compensation to auditors, and it shall be paid by the county if they are appointed

Compensation.
1817, 142.
R. S. 96, § 31.

G. S. 121, § 50.	by the supreme judicial court, the superior court or the probate	3
1867, 67.	court. If they are appointed by any other court, the compensa-	4
1873, 342.	tion awarded may be paid by either party and taxed in his bill of	5
1878, 173.	costs if he prevails; but the plaintiff shall be liable for such pay-	6
P. S. 159, § 55.	ment, and the court may make all orders and decrees, and issue	7
1880, 311.	process to enforce the same.	8
125 Mass. 316.		

REPORTS OF MASTERS AND AUDITORS.

Reports of masters and auditors. 188, 282.	SECTION 61. Auditors, masters in chancery and special masters	1
	shall file their final report in the office of the clerk of the court by	2
	which they are appointed within ninety days after the hearing before	3
	them has been closed or within such further time as the court may	4
	allow, and, in default thereof, shall not be entitled to any fees.	5

REPORTER OF DECISIONS.

Reporter of decisions. 1803, 133, § 1. R. S. 88, §§ 36, 37.	SECTION 62. The reporter of the decisions of the supreme judi-	1
	cial court shall be appointed by the governor, with the advice and	2
	consent of the council, and shall hold his office at their pleasure.	3

G. S. 121, § 51.

P. S. 159, § 56.

142 Mass. 29.

Preparation of reports. 1803, 133, § 1. 1826, 51. R. S. 88, §§ 38, 39. 1838, 100. G. S. 121, §§ 52, 53. 1879, 280. P. S. 159, §§ 57, 58. 1889, 471, § 3.	SECTION 63. He shall attend the law sittings of the court, make	1
	true reports of decisions upon all questions of law which are argued	2
	by counsel, and shall prepare them for publication with suitable	3
	head notes, tables of cases and indexes, furnish them to the publisher,	4
	and superintend the correction, proof reading and publication thereof.	5
	He shall in his discretion report the several cases more or less at	6
	large according to their relative importance, so as not unnecessarily	7
	to increase the size or number of the volumes of reports. The	8
	reports of the decisions upon all questions of law argued and de-	9
	termined before the first day of September in each year shall be	10
	published within ninety days thereafter.	11

Style of re- ports. 1867, 239. P. S. 159, § 60.	SECTION 64. The volumes of reports shall be styled "Massa-	1
	chusetts Reports", and the name of the reporter shall not be added	2
	thereto.	3

Preservation of opinions until publica- tion. 1874, 43. P. S. 159, § 61. 142 Mass. 29.	SECTION 65. The county of Suffolk shall provide a safe and con-	1
	venient place in the city of Boston in which the reporter shall keep	2
	the written opinions of the court in all law cases argued in the several	3
	counties until their publication in the reports, and his dockets and	4
	copies of papers in such cases, and in which he shall afford due facil-	5
	ities for their examination.	6

Deputy to reporter. R. S. 88, § 41. G. S. 121, § 55. P. S. 159, § 62.	SECTION 66. If the reporter is prevented from attending at a	1
	sitting, he shall depute a suitable person to attend for him and	2
	take notes of the decisions; or the court may appoint a person to	3
	act for him until he resumes the performance of his duties, or until	4
	another is appointed.	5

Compensation. 1803, 133, § 2. R. S. 88, § 42.	SECTION 67. The reporter shall receive from the commonwealth	1
	an annual salary of four thousand dollars, and shall be allowed not	2

3 more than two thousand dollars a year for clerk hire and for the
 4 incidental expenses of his office which shall be paid by the com-
 5 monwealth. Such amounts shall be in full compensation for his
 6 services and for clerk hire and incidental expenses. All fees re-
 7 ceived by him for copies of opinions, rescripts and other papers
 8 shall be paid by him quarterly to the treasurer and receiver general
 9 with a detailed statement thereof.

1843, 9, § 1.
 G. S. 121, § 56.
 1879, 280.
 P. S. 159, § 63.
 1889, 471, § 4.
 1892, 380.

DEPUTY SHERIFFS AND OTHER COURT OFFICERS.

1 SECTION 68. Not more than four deputy sheriffs shall receive
 2 compensation for attendance upon a civil sitting of the supreme
 3 judicial court unless the presiding justice in writing requires the
 4 sheriff to procure the attendance, for the whole or a portion of such
 5 sitting, of an additional number.

Officers of
 supreme judi-
 cial court.
 1862, 102, § 3.
 P. S. 159, § 66.

1 SECTION 69. Each officer in attendance upon the supreme judi-
 2 cial court in the county of Suffolk, not exceeding six, including the
 3 messenger of the justices of said court, shall receive in full for all
 4 services performed by him seventeen hundred dollars, of which thir-
 5 teen hundred dollars shall be paid by said county and four hundred
 6 dollars by the commonwealth.

Salaries of offi-
 cers in supreme
 judicial court.
 1882, 232, § 1.
 1886, 37, § 2.
 1890, 294.

1 SECTION 70. Not more than four deputy sheriffs shall receive
 2 compensation for attendance upon a sitting of the superior court for
 3 civil business or a sitting of said court for both civil and criminal
 4 business unless the presiding justice or the district attorney in
 5 writing requires the sheriff to procure the attendance, for the whole
 6 or a portion of such sitting, of an additional number.

Officers of
 superior court.
 1862, 102, § 1.
 P. S. 159, § 64.

1 SECTION 71. Not more than six deputy sheriffs or constables
 2 shall receive compensation for attendance upon a criminal sitting of
 3 the superior court for criminal business unless the district attorney
 4 in writing requires the sheriff to procure the attendance, for the whole
 5 or a portion of such sitting, of an additional number.

— for criminal
 sitting.
 1862, 102, § 2.
 P. S. 159, § 65.

1 SECTION 72. The sheriff of the county of Suffolk shall appoint,
 2 subject to the approval of the justices of the superior court or a
 3 majority thereof, officers for attendance upon the several sessions
 4 of said court in said county, not exceeding four for each session for
 5 civil business held with juries, three for each session held without
 6 juries and six for the session for criminal business. The sheriff shall
 7 from time to time interchange said officers between the several ses-
 8 sions so as to secure, as nearly as may be, the performance of equal
 9 service by all officers.

— for superior
 court in
 Suffolk.
 1877, 169, § 2.
 P. S. 159, § 67.
 1888, 357, § 1.

1 SECTION 73. The sheriff of the county of Middlesex may appoint,
 2 subject to the approval of the justices of the superior court or of a
 3 majority thereof, eight officers for attendance on the sessions of said
 4 court for civil or criminal business. Such officers shall, when re-
 5 quired by the sheriff, attend the sessions of the supreme judicial
 6 court and probate court, when not in attendance on the superior
 7 court.

— for superior
 court in
 Middlesex.
 1892, 107, § 1.
 1895, 246, § 1.

Bond.
Authority.
1888, 357, §§ 2, 3.
1892, 107, §§ 2, 4.

SECTION 74. Each of the officers named in the two preceding sections shall give to the sheriff of the county a bond with sufficient sureties, in the sum of fifteen hundred dollars, for the faithful performance of his duties. Such officers shall have the authority of constables to serve venire for jurors and the processes of said courts, and shall be paid by the county their actual expenses necessarily incurred in making such services.

Fees for attendance at court.
1795, 41, § 1.
R. S. 122, §§ 5, 8.
1843, 75, § 2.
1856, 185.
G. S. 157, §§ 4, 7.
1866, 190.
1873, 222.
1879, 227, § 1.
P. S. 159, § 68.
1882, 232, § 2.
1887, 243.
1895, 369.
1897, 342.

SECTION 75. Deputy sheriffs who do not receive an annual salary shall be paid five dollars a day by the county for attendance upon the supreme judicial court or the superior court or the probate court or court of insolvency, and five cents a mile for travel out and home once a week, during such attendance. Constables shall be paid four dollars a day for such attendance and the like amount for travel. Said officers or any officers additional to those allowed by the provisions of section sixty-nine whose attendance may be required by the supreme judicial court in the county of Suffolk shall, if deputy sheriffs, receive five dollars and, if constables, four dollars and fifty cents a day for attendance upon said court, and for travel, the same as in other counties. Said compensation, when said court is sitting for the commonwealth, shall be paid by the commonwealth, and in other cases by the county.

Salaries of officers in superior court in Suffolk and Middlesex.
1862, 216, § 11.
1877, 169, §§ 1, 3.
P. S. 159, § 69.
1882, 245, § 3.
1883, 54.
1886, 37, § 1.
1892, 107, § 3.
1895, 246, § 2.

SECTION 76. Each officer in attendance upon the sessions of the superior court in the county of Suffolk and Middlesex and the messenger of the justices of the superior court shall receive in full for all services performed by him an annual salary of seventeen hundred dollars which shall be paid monthly by said counties, respectively; and said officers in the county of Middlesex shall, in addition, receive ten cents a mile for travel out and home once a week during such attendance if such distance exceeds five miles in one direction. Any additional officers whose attendance may be required in said court in the county of Suffolk, as provided in sections seventy and seventy-one, shall be allowed three dollars for each day of service actually rendered, which shall be paid by said county.

Allowance for uniforms.
1888, 371.
1891, 181.
1892, 107, §§ 3, 5.
1895, 246, §§ 2, 3.

SECTION 77. The officers named in sections sixty-nine, seventy-three and seventy-six and deputy sheriffs in attendance upon the supreme judicial court or the superior court in the county of Suffolk or Middlesex shall, while on duty in said courts, wear uniforms which shall be designated by the sheriff of the county and, except the deputy sheriffs in the county of Middlesex, shall each be annually allowed by the respective counties one hundred dollars in addition to the salary allowed by law in order to provide such uniforms.

Summoning of witnesses by officers in Suffolk.
1879, 193.
P. S. 159, § 70.

SECTION 78. The officers in attendance upon the sessions of the superior court for criminal business in the county of Suffolk shall summon witnesses on behalf of the commonwealth from any part of the commonwealth, but shall receive therefor no compensation in addition to their salaries except for expenses actually incurred and paid.

Officers not to draw double pay.

SECTION 79. No deputy sheriff or constable who is in receipt of a salary from the county shall be designated to attend, for compen-

3 sation by the day, upon the sessions of the supreme judicial court
 4 or the superior court, and no deputy sheriff or constable shall re-
 5 ceive compensation for attendance upon the sessions of more than
 6 one court, nor upon more than one session of the same court, on
 7 the same day.

1862, 102, § 4.
 1879, 227, § 2.
 P. S. 159, § 71.

STENOGRAPHERS.

1 SECTION 80. The justices of the superior court, or a majority
 2 of them, shall appoint a stenographer for each regular session of said
 3 court held for civil business and for the session of said court held
 4 for criminal business within and for the county of Suffolk, and a
 5 stenographer for said court in all other counties. They may also, if
 6 the business of the court requires it, appoint an additional steno-
 7 grapher in any county except Suffolk, who shall serve when desig-
 8 nated for duty. Each stenographer shall be an officer of the court
 9 and shall be sworn, and the same person may be appointed steno-
 10 grapher for more than one county. Such justices, or a majority of
 11 them, may remove said stenographers at any time, and may fill a
 12 vacancy which is caused by such removal or otherwise.

Appointment
 of stenogra-
 phers.
 1870, 312, §§ 1, 3.
 P. S. 159, §§ 72,
 74.
 1885, 291, §§ 1, 3,
 4.
 1887, 24, §§ 1, 3.
 1893, 404.
 1894, 424, §§ 1, 5.
 1896, 459, §§ 1, 8.

1 SECTION 81. Each stenographer who is appointed for the county
 2 of Suffolk under the provisions of the preceding section may, with
 3 the approval of any justice of said court, appoint one or more assist-
 4 ants, who shall also be sworn; but no additional compensation shall
 5 be paid or expense incurred by reason of such appointment. The
 6 presiding justice of said court may, except in the county of Suffolk,
 7 in case of the illness or temporary absence of the stenographer, ap-
 8 point a competent person to act during such illness or absence.

—of assistants
 1870, 312, § 4.
 P. S. 159, § 75.
 1885, 291, § 3.
 1894, 424, § 4.
 1896, 459, § 4.

1 SECTION 82. The presiding justice of any special or temporary
 2 session of the superior court for civil or criminal business in the
 3 county of Suffolk may, in his discretion, appoint one or more
 4 stenographers to attend therein, who shall be officers of the court
 5 and who shall be sworn. But it shall not be necessary to appoint
 6 a stenographer for any session for civil business if the justices do
 7 not consider it of a permanent and continuous character.

Temporary
 stenographer
 in Suffolk.
 1894, 424, § 6.
 1896, 459, § 5.

1 SECTION 83. At the trial of any issue of fact in the supreme
 2 judicial court, or at the trial of any criminal case in the superior
 3 court, the presiding justice may appoint a stenographer, who shall
 4 be sworn.

Stenographer
 for supreme
 judicial and
 superior
 courts.
 1897, 478, § 1.

1 SECTION 84. A justice of the superior court may, upon the
 2 request of the district attorney, appoint a stenographer, who shall
 3 be sworn and who shall take stenographic notes of such testimony
 4 given before the grand jury as he may direct and shall provide him
 5 with a transcript fully written out of such part of said notes as he
 6 may require. The provisions of this section shall not authorize
 7 the taking of any statement or testimony of a grand juror.

— for grand
 jury.
 1897, 478, § 2.

1 SECTION 85. Stenographers shall attend the sessions of the
 2 courts for which they are appointed, and those who are appointed
 3 for jury sessions of the superior court for civil business in the county
 4 of Suffolk shall, when directed by the justice presiding in such

Duties of
 stenographers.
 1870, 312, § 2.
 P. S. 159, § 73.
 1885, 291, § 2.
 1887, 24, §§ 1, 2;
 74, § 2.

1892, 133.
1894, 424, § 2.
1896, 459, §§ 2, 3.
1897, 478, § 1.

session, serve in any other of said sessions as the necessities of the 5
service may require. Said stenographers, unless excused there- 6
from by the presiding justice, stenographers for criminal business 7
in the county of Suffolk, upon the request of the presiding justice, 8
the district attorney or the defendant, stenographers for civil busi- 9
ness in counties except Suffolk and stenographers appointed under 10
the provisions of sections eighty-two and eighty-three shall take 11
stenographic notes of all the evidence given at each trial in their 12
respective courts and of the rulings and charge of the presiding 13
justice, and, when requested by him, shall read from such notes 14
in open court any portion of the testimony so taken and, upon 15
request, shall provide him with a transcript of such notes, fully 16
written out, of such part of said testimony, rulings or charge as 17
may be desired, and, upon request, shall within a reasonable time 18
furnish to either party a like transcript, upon payment by the party 19
requesting it of ten cents a hundred words for each copy so fur- 20
nished. If the transcript is furnished at the request of the pre- 21
siding justice, the stenographer shall be paid therefor at the same 22
rate by the county, upon a voucher approved by the justice, and, in 23
criminal cases in the county of Suffolk, such expense and the expense 24
of transcripts furnished to the district attorney shall be taxed 25
like other expenses. The stenographer appointed for the criminal 26
session of the superior court for the county of Suffolk, when not 27
employed in said court, shall perform such services as stenographer 28
as may be required by the district attorney, and shall receive the 29
same compensation for transcripts as is hereinbefore provided. 30

Duties of
stenographers.
1894, 424, § 3.

SECTION 86. Each stenographer who is appointed for the ses- 1
sions of the superior court for civil business without juries in the 2
county of Suffolk shall attend therein when requested by the presid- 3
ing justice, and shall perform the duties required by the preceding 4
section of stenographers in the jury sessions of said court, and shall 5
render such other clerical assistance to the justices of said court as 6
said justices may consider necessary. He shall receive for tran- 7
scripts furnished to parties the compensation provided in the pre- 8
ceding section. 9

Interchange of
services.
1894, 424, § 8.
1896, 459, § 6.

SECTION 87. Official stenographers of the superior court in the 1
same or different counties may, with the consent of said court, in- 2
terchange services or perform the duties of each other. 3

Salaries and
compensation.
1870, 312, § 1.
P. S., 159, § 72.
1885, 291, § 1.
1887, 24, § 1;
74, § 1.
1889, 324.
1893, 404, 452.
1894, 68, 330;
424, §§ 1, 6.
1896, 459, §§ 1, 5.
1897, 478.
1901, 329.

SECTION 88. Stenographers who are appointed for the sessions 1
of the superior court for civil business with juries in the county of 2
Suffolk and the stenographer appointed for the session of said court 3
for criminal business in said county shall each receive an annual 4
salary of twenty-five hundred dollars which shall be paid by the 5
county; stenographers appointed for the sessions of said court with- 6
out juries shall each receive such salary as the justices of said court 7
shall establish, not exceeding twenty-five hundred dollars which 8
shall be paid by the county. The stenographers appointed for the 9
superior court for other counties which contain a population of more 10
than two hundred thousand shall each receive such salary as the 11
justices of said court shall establish, not exceeding twenty-five 12
hundred dollars a year. Stenographers appointed for the superior 13

14 court for civil business in other counties shall each receive nine
15 dollars for each day's actual and necessary attendance at court which
16 shall be paid by the county upon the certificate of the presiding
17 justice as to such attendance. Stenographers appointed under the
18 provisions of section eighty-three shall each receive ten dollars for
19 each day's actual and necessary attendance at court, and the stenog-
20 rapher appointed under the provisions of section eighty-four, a like
21 amount and ten cents a hundred words for transcripts furnished to
22 the district attorney which shall be paid by the county. Stenog-
23 raphers appointed under the provisions of section eighty-two shall
24 each receive nine dollars a day for each day of actual and necessary
25 attendance in court and the same amount for transcripts as is
26 allowed by section eighty-five.

CHAPTER 166.

OF PROVISIONS RELATIVE TO COURTS AND OF NATURALIZATION.

SECTIONS 1-13. — Provisions relative to Courts.
SECTIONS 14-20. — Naturalization.

PROVISIONS RELATIVE TO COURTS.

1 SECTION 1. The courts of the commonwealth, the justices thereof
2 and trial justices shall have and exercise all the powers which may
3 be necessary for the performance of their duties. They may issue all
4 writs, warrants and processes and make and award judgments, de-
5 crees, orders and injunctions which may be necessary or proper to
6 carry into effect the powers granted to them, and, if no form for
7 such writ or process is prescribed by statute, they shall frame one in
8 conformity with the principles of law and the usual course of pro-
9 ceedings in the courts of this commonwealth.

General
powers of
courts.
1782, 9, § 2.
1783, 46, § 1.
1817, 87;
190, § 1.
R. S. 81, §§ 6, 9;
82, § 36; 83, § 9;
85, § 29; 87, § 13.
1853, 371, § 3.
G. S. 115, § 3;
116, § 11; 117,
§ 20; 120, § 47.
P. S. 153, § 3;
154, § 12; 155,
§ 67; 156, § 23.

1893, 396, § 57. 2 Met. 271. 155 Mass. 486.

1 SECTION 2. The justices of the supreme judicial court and of the
2 superior court, justices and special justices of police, district and
3 municipal courts, by virtue of their offices, and justices of the
4 peace shall be conservators of the peace throughout the common-
5 wealth and as such may, upon view of an affray, riot, assault or
6 battery, without a warrant in writing, command the assistance of
7 every sheriff, deputy sheriff, constable and police officer and of all
8 other persons present for its suppression and for the arrest of all
9 persons concerned therein as provided in chapters two hundred and
10 sixteen and two hundred and seventeen. Persons so arrested shall
11 be taken before a police, district or municipal court or a trial justice
12 for examination.

Justices to be
conservators
of the peace.
1692-3, 18, § 6.
1782, 9, § 1.
1783, 51, § 1.
1794, 26.
R. S. 81, § 7;
85, § 27; 87, § 7.
1854, 335, § 5.
1858, 138, § 1.
G. S. 115, § 2;
120, § 32.
P. S. 153, § 2;
154, § 11; 155,
§ 1.
1893, 396, § 43.
11 Gray, 194.

1 SECTION 3. In writs, processes, records and judicial proceed-
2 ings, civil or criminal, the day on which any sitting is to commence
3 may be designated as the first, second or other Monday, or other
4 day in the week, as the case may be, of the month in which the
5 sitting commences.

First day of
sitting, how
designated.
R. S. 82, § 44.
1859, 196, § 18.
G. S. 115, § 15;
122, § 1.

P. S. 153, § 21; 160, § 1.

Change of
time and place
of court.
1730-31, 12.
1797, 16, § 10.
R. S. 89, §§ 2, 3.
G. S. 122, §§ 2, 3.
P. S. 160, §§ 2, 3.

SECTION 4. If it is unsafe or inexpedient to hold a court at the time and place appointed, a justice of the court may appoint another time and place within the same county for holding the same. Such adjournment shall be made by an order in writing, signed by the justice or justices, and served by public proclamation by the person to whom it is directed in the shire town or as near thereto as is safe, and also by publication in such newspaper or in such other manner as is required in the order.

Courts not to
be open Sun-
day, etc.,
unless, etc.
R. S. 89, § 4.
1856, 113, § 1.
G. S. 122, § 4.
1881, 71.
P. S. 160, § 4.
1894, 130, §§ 3, 4.
1896, 162, § 1.
13 Mass. 347.
14 Allen, 156.
107 Mass. 209.

SECTION 5. Courts shall not be opened on Sunday, on a legal holiday or the following day if a holiday occurs on Sunday, except as provided in section four of chapter one hundred and fifty-eight or except for the purpose of entering or continuing cases, instructing or discharging a jury, receiving a verdict or adjourning; but the provisions of this section shall not prevent the exercise of the jurisdiction of any magistrate in criminal cases to preserve the peace or arrest offenders.

Sheriffs, etc.,
to serve
process.
1783, 44, § 1;
46, § 1.
1817, 13; 190, § 1.

SECTION 6. Sheriffs, deputy sheriffs, constables and other officers shall serve all lawful processes issued by a court, judge, judicial officer or county commissioners which are legally directed to them.

R. S. 14, § 68; 83, § 11; 84, § 3; 85, § 30.

G. S. 122, § 5.

P. S. 160, § 5.

Attorneys,
etc., not to buy,
etc., demands
for collection.
1811, 62.
R. S. 89, §§ 5-7.
G. S. 122, §§ 6, 7.
P. S. 160, §§ 6, 7.
13 Pick. 79.
109 Mass. 237.
138 Mass. 530.

SECTION 7. An attorney, justice of the peace, sheriff, deputy sheriff or constable who, directly or indirectly, buys or is interested in buying, or, directly or indirectly, lends or advances or agrees to lend or advance any money or other goods, or gives or promises any valuable consideration whatever to any person, as an inducement to place or in consideration of having placed in the hands of any person any bond, note, book debt or right of action for collection, with intent to make for himself any gain from the fees arising from such collection by legal proceedings, shall, for each offence, forfeit not less than twenty nor more than five hundred dollars.

Criers.
1859, 207.
G. S. 122, § 12.
P. S. 160, § 12.

SECTION 8. Clerks or assistant clerks of courts, sheriffs or their deputies, as the court may direct, shall perform the duties of criers, without additional compensation; and any officer may adjourn the court by order thereof.

Judge, etc.,
not disquali-
fied by interest,
when.
1808, 19, § 2.
1815, 103, § 2.
1828, 13, § 3.
R. S. 90, § 124.
1836, 4, § 13.
G. S. 123, § 13.

SECTION 9. No person shall be disqualified from acting as judge, magistrate, appraiser or officer of any kind in a suit or proceeding in which a city or town is interested by reason of his interest as an inhabitant thereof. No juror shall be disqualified by reason of being an inhabitant of the city of Boston.

P. S. 160, § 13.

2 Allen, 396, 402, 596.

139 Mass. 315.

147 Mass. 585.

157 Mass. 14.

United States
judicial officer.
1855, 489, § 14.
1858, 175, § 1.
G. S. 144, § 67.
1868, 24, § 1.
P. S. 160, § 14.

SECTION 10. No person who holds a judicial office under the laws of the United States shall hold any judicial office under the constitution and laws of this commonwealth, except that of trial justice or justice of the peace.

Referee in
bankruptcy
not to hold
certain offices.
1867, 357, § 2.
P. S. 160, § 15.

SECTION 11. No person who holds the office of referee in bankruptcy under the laws of the United States shall at the same time hold any judicial office, except that of justice of the peace, nor the

4 office of clerk or assistant clerk of any court, or register or assistant
5 register of probate and insolvency, under the laws of this common-
6 wealth.

1 SECTION 12. Any court or trial justice may exclude minors as Minors may be
2 spectators from the court room during the trial of any cause, civil or excluded from
3 criminal, if their presence is not necessary as witnesses or parties. court room.
1881, 274.
P. S. 160, § 16.

1 SECTION 13. Commitments for contempt of court may be made Commitments
2 to any jail in the commonwealth; and processes issued in proceed- for contempt.
3 ings relative to alleged contempts may be served by any sheriff or Service of
4 deputy sheriff to whom they are directed in any other county as process.
5 well as in that for which such sheriff or deputy sheriff is chosen or 1886, 224.
6 appointed.

NATURALIZATION.

1 SECTION 14. The supreme judicial court, the superior court, Jurisdiction of
2 and, if it has common law jurisdiction, a seal and a clerk duly naturalization.
3 appointed by the governor, any police, district or municipal court, 1856, 47, § 1.
4 may, respectively, have jurisdiction of primary declarations of inten- 1858, 44.
5 tion of aliens to become citizens of the United States, and of final G. S. 122, § 8.
6 applications for naturalization of aliens; but no declaration or ap- P. S. 160, § 8.
7 plication shall be received by the supreme judicial court or the 1885, 345, § 1.
8 superior court unless the applicant resides in the county in which 1886, 203.
9 the court is held, nor by any police, district or municipal court 1891, 419.
10 unless the applicant resides in the district for which the court is 1892, 348.
11 established. If the applicant does not reside in the judicial district
12 of any police, district or municipal court which has a seal and a
13 clerk duly appointed by the governor, he may apply to such one of
14 said courts as is held nearest to the town in which he resides.

1 SECTION 15. Primary declarations of intentions of aliens to Primary
2 become citizens of the United States may, at any time, be filed in declarations,
3 the supreme judicial court or the superior court, or in a police, when filed.
4 district or municipal court which has jurisdiction of naturalization, 1856, 47, § 2.
5 and the required oath may be administered by the clerk at the G. S. 122, § 9.
6 time such declaration is filed and a record thereof shall be entered P. S. 160, § 9.
7 on the docket. 1886, 45.
1891, 180.

1 SECTION 16. Every application for naturalization shall be en- Final applica-
2 tered on the docket of the court and final action thereon shall be tions, when
3 had at any regular sitting of the court. Such application shall con- filed.
4 tain the name, age, occupation and residence of the applicant, the 1885, 345, § 2.
5 name of the street and number of the house in which he resides, 1900, 374, § 1.
6 the names of the persons whom he intends to summon as witnesses
7 at his final hearing and the name of the street and number of the
8 house in which they severally reside; but if the name of the street
9 or the number of the house thereon cannot be given, the place of
10 residence shall be described with sufficient accuracy for identifi-
11 cation.

1 SECTION 17. A record of every application for naturalization, Record and
2 the action thereon and the names and residences of the witnesses returns of nat-
3 shall be kept by the clerk of each court and a return shall be made uralizations.
1885, 345, § 5.
1887, 36.

annually, on or before the first day of February, to the secretary of the commonwealth, of the name, age, occupation and residence of every person naturalized prior to the first day of the preceding January, the date of the naturalization and the names and residences of the witnesses. Such returns shall be preserved by the secretary in a form convenient for reference.

Fees.
1879, 300, § 3.
P. S. 199, § 4.
1885, 345, § 6.
1897, 505.
1900, 374, § 3.
[1 Op. A. G.
438.]

SECTION 18. The fees of clerks of all courts under the provisions of the four preceding sections shall be as follows: for receiving the primary declaration or application for the naturalization of an alien, one dollar; for the final declaration or application for the naturalization of an alien, two dollars; for making out the papers for either of said declarations, one dollar. All fees in naturalization cases shall be accounted for and paid over by said clerks to the treasurers of their respective counties, who shall pay them to the treasurers of county law libraries, the same to be in addition to the sums which such associations are otherwise entitled to receive by law. No primary or final certificate shall issue until the fees provided for in this section are first paid.

Penalties.
1855, 28, § 2.
G. S. 122, § 11.
P. S. 160, § 11.
1885, 345, § 8.
4 Gray, 559.

SECTION 19. A clerk or other person who records or files such application or declaration or issues a certificate in violation of the provisions of sections sixteen or seventeen shall be punished by a fine of twenty-five dollars.

Attending
officers.
1885, 345, § 10.

SECTION 20. The justice of a police, district or municipal court, when sitting for naturalization, may designate not more than two constables of the city or town, or deputy sheriffs of the county within which the court is held, to attend the court. Their fees shall be the same as are provided for attending the superior court, and shall be approved and paid by the county like expenses in criminal cases.

TITLE II.

OF ACTIONS AND PROCEEDINGS THEREIN.

CHAPTER 167. — Of the Commencement of Actions and the Service of Process.

CHAPTER 168. — Of Arrest on Civil Process.

CHAPTER 169. — Of Bail.

CHAPTER 170. — Of Proceedings against Absent Defendants and upon Insufficient Service.

CHAPTER 171. — Of the Survival of Actions and of the Death and Disabilities of Parties.

CHAPTER 172. — Of Actions by and against Executors and Administrators.

CHAPTER 173. — Of Pleading and Practice.

CHAPTER 174. — Of Set-off and Tender.

CHAPTER 175. — Of Witnesses and Evidence.

CHAPTER 176. — Of Juries.

CHAPTER 177. — Of Judgment and Execution.

CHAPTER 178. — Of the Levy of Executions on Land.

CHAPTER 167.

OF THE COMMENCEMENT OF ACTIONS AND THE SERVICE OF PROCESS.

SECTIONS 1-14. — Venue of Actions.

SECTIONS 15-25. — Forms, Issuing and Return of Writs.

SECTIONS 26-37. — Service of Writs.

SECTIONS 38-57. — Attachment of Property — General Provisions.

SECTIONS 58-65. — Attachment of Real Estate and Leasehold Estates.

SECTIONS 66-68. — Attachment of Corporate Shares.

SECTIONS 69-78. — Attachment of Encumbered Personalty.

SECTIONS 79-81. — Supplementary Process.

SECTIONS 82-96. — Sale of Personal Property Attached.

SECTIONS 97-100. — Attachment of Share of Joint Owner of Personalty.

SECTIONS 101-109. — Fraudulent Attachments.

SECTION 110. — Reduction or Discharge of Attachment.

SECTIONS 111-127. — Dissolution of Attachment.

SECTION 128. — Execution of Bonds.

VENUE OF ACTIONS.

1 SECTION 1. A transitory action shall, except as otherwise pro-
2 vided, if any one of the parties thereto lives in the commonwealth,
3 be brought in the county in which one of them lives or has his
4 usual place of business. If brought in any other county, unless
5 transferred under the provisions of section fourteen, the writ shall
6 abate and the defendant shall be allowed double costs. If neither

Venue of
transitory
actions.
C. L. 2, § 2.
1749-50, 9.
1784, 28, § 13.
R. S. 90, §§ 14,
15.
1854, 322.
1855, 12.
1856, 70.

G. S. 123, § 1. party lives in the commonwealth, the action may be brought in any 7
 P. S. 161, § 1. county. 15 Gray, 50. 4 Allen, 17, 365. 14 Allen, 94. 152 Mass. 268. 156 Mass. 522. 8
 6 Gray, 122.

Venue of
transitory
actions in
inferior courts.
R. S. 87, § 35.
G. S. 116, § 19.
1836, 47.
1839, 17, § 3.
1874, 271, § 8.
1875, 106, § 2.
1876, 184.
1878, 72.
1879, 154.
P. S. 154, §§ 14,
15, 46, 48, 49, 60;
175, § 3.
1893, 306, § 13.
1894, 338, § 1;
431.
161 Mass. 440.
164 Mass. 144.
170 Mass. 570.

SECTION 2. A transitory action in a police, district or municipal 1
 court shall be brought in the county in which one of the defendants 2
 lives or has his usual place of business, or, if commenced by the trustee 3
 process, in the county in which all the persons named in the writ 4
 as trustees live or have their usual places of business, and, in either 5
 case, in a court within whose judicial district one of the parties lives 6
 or has his usual place of business; or, if no one of the parties lives 7
 or has a usual place of business within a judicial district, then in 8
 any such court in said county. An action of summary process under 9
 the provisions of chapter one hundred and eighty-one shall, if the 10
 land in controversy is situated within a judicial district, be brought 11
 in the court for that district; otherwise, it may be brought in any 12
 such court in the county in which the land is situated. Said courts 13
 shall have jurisdiction of a transitory action against a defendant 14
 who is not an inhabitant of this commonwealth if personal service 15
 or an effectual attachment of property is made within the common- 16
 wealth; and such action may be brought in any of said courts in 17
 the county in which the service or attachment was made. 18

— of actions
of replevin.
1789, 26, § 4.
R. S. 113, § 28.

SECTION 3. An action of replevin shall be brought in the county 1
 in which the goods or beasts are detained. G. S. 143, § 11. P. S. 184, § 11. 2

— of actions
by the com-
monwealth.
1866, 233, § 1.
P. S. 161, § 4.

SECTION 4. A civil action in which the commonwealth is plain- 1
 tiff or in which money due to the commonwealth is sought to be 2
 recovered may be brought in the county in which the defendant 3
 lives or has his usual place of business, or in the county of Suffolk. 4

— of actions by
and against
counties.
1809, 128.
R. S. 90, §§ 19,
20.
G. S. 123, §§ 3, 4.
P. S. 161, §§ 5, 6.

SECTION 5. A local or transitory action by a county shall be 1
 brought in the county in which the defendant lives or in a county 2
 adjoining the plaintiff county. If the defendant lives in the plaintiff 3
 county, it shall be brought in an adjoining county. Such action 4
 against a county shall, at the election of the plaintiff, be brought 5
 in the county in which he lives, in the defendant county or in an 6
 adjoining county. 7

— of actions
against towns,
etc., for defect-
ive highways,
etc.
1877, 234, § 5.
P. S. 161, § 7.

SECTION 6. An action against a city, town or person to recover 1
 for injury or damage received by reason of a defect, want of repair 2
 or of an insufficient railing in or upon a highway, town way, cause- 3
 way or bridge shall be brought in the county in which said city or 4
 town is situated or said person resides; but such action against 5
 the city of Boston may be brought in the county of Middlesex, in 6
 the county of Norfolk or in the county in which the plaintiff resides, 7
 and such action against the town of Nantucket or against any town 8
 in the county of Dukes County may be brought in the county of 9
 Bristol. 10

— of actions
by and against
corporations.
R. S. 90, § 16.
1836, 4, § 12.
G. S. 123, § 5.
P. S. 161, § 8.
4 Met. 212.
6 Cush. 524.

SECTION 7. Transitory actions, except those mentioned in the 1
 preceding section, to which a corporation, other than a county or 2
 the city of Boston, is a party may be brought as follows: 3
 First, If both parties are cities, towns or parishes, in the 4
 county in which either party is situated. 5

6 Second, If both parties are corporations, other than a city, town
 7 or parish, in any county in which either corporation has an estab-
 8 lished or usual place of business, or in which it held its last annual
 9 meeting, or usually holds its meetings.

10 Third, If one party is a corporation named in the two preceding
 11 clauses, and the adverse party is a natural person, in any county
 12 in which, by the provisions of said clauses, the corporation might
 13 sue or be sued, or in the county in which the natural person lives or
 14 has a usual place of business.

1 SECTION 8. An action by or against the city of Boston, except
 2 actions mentioned in section six and actions by the collector of said
 3 city under the provisions of sections thirty-two and thirty-three of
 4 chapter thirteen, may be brought in the county of Suffolk, Essex,
 5 Middlesex or Norfolk, or in the county in which the plaintiff lives.

1836, 4, § 13.

G. S. 123, § 6.

1878, 225.

P. S. 161, § 9.

Venue of
transitory
actions by and
against city of
Boston.
1808, 19, § 1.
1815, 103, § 1.
1828, 13, § 1.
R. S. 90, §§ 120,
121.

1 SECTION 9. The defendant or tenant in an action brought in
 2 the county of Suffolk by the city of Boston or by its collector may,
 3 if the action is brought in the supreme judicial court or the supe-
 4 rior court, within thirty days after the day for appearance, or if the
 5 action is commenced in a police, district or municipal court and
 6 taken to the superior court on appeal, within thirty days after
 7 the entry of the appeal, file a motion in writing for the removal
 8 of the action to the county of Essex, Middlesex or Norfolk, and
 9 the court shall thereupon order it to be removed to the same court
 10 in such one of said counties as the attorney of the city of Boston
 11 elects.

— removal
from county
of Suffolk.
1828, 13, § 1.
R. S. 90, §§ 122,
123.
1836, 4, § 13.
G. S. 123, § 7.
P. S. 161, § 10.
1885, 384, § 14.

1 SECTION 10. A transitory action by or against an executor or
 2 administrator may be brought in any county in which it might have
 3 been brought by or against the testator or intestate at the time of
 4 his decease.

— by and
against execu-
tors, etc.
1865, 13, § 1.
P. S. 161, § 2.

1 SECTION 11. If a tract of land lies in two or more counties, an
 2 action relative to it, to which neither a county, the city of Boston
 3 nor any corporation named in section seven is a party, may be
 4 brought in any of said counties, and the declaration shall be so
 5 drawn as to include the whole tract.

Actions rela-
tive to land
in different
counties, etc.
1859, 37.
G. S. 123, § 2.
P. S. 161, § 3.
102 Mass. 461.

1 SECTION 12. If the supreme judicial court or the superior court
 2 finds that a party to an action or proceeding pending therein cannot,
 3 by reason of local prejudice or other cause, have an impartial trial
 4 in the county in which the action or proceeding was commenced,
 5 it may, upon the application of either party, order it to be re-
 6 moved for trial to another county. Upon the entry of such order,
 7 the clerk of the court in which the action or proceeding is pending
 8 shall forthwith transmit all the papers in the case, and a certified
 9 copy of said order to the clerk of the court for the county to which
 10 it has been ordered to be removed. The clerk who receives such
 11 papers and order shall forthwith enter them on his docket, and
 12 the case shall thereupon proceed as if it had been originally com-
 13 menced in the county to which it has been removed.

Change of
venue.
1887, 347.

Venue for
recovery of
forfeitures.
R. S. 90, § 17.
G. S. 123, § 8.
P. S. 161, § 11.

SECTION 13. A civil action for the recovery of a forfeiture, except an action in which the commonwealth is plaintiff, or in which money is sought to be recovered for the commonwealth, shall be brought in the county in which the offence was committed, unless the statute imposing the forfeiture otherwise provides.

Erroneous
venue.
1851, 233, § 117.
1852, 312, § 80.
G. S. 123, § 70.
1880, 251.
P. S. 161, § 12;
167, § 73.
130 Mass. 335.
133 Mass. 466.
152 Mass. 268.

SECTION 14. If a local action which is commenced in the supreme judicial court or the superior court has been brought in an erroneous venue, the court may, if the error is discovered at the trial, of its own motion order a nonsuit, unless good cause is shown why the trial should be allowed to proceed; or, if the error is discovered at any stage of the proceedings of an action, local or transitory, the court may, upon motion of either party, order the action, with all papers relating thereto, to be transferred to the proper county upon terms to the defendant; and it shall thereupon be entered and prosecuted in the same court for that county as if it had been originally commenced therein, and all prior proceedings otherwise regularly taken shall thereafter be valid.

FORMS, ISSUING AND RETURN OF WRITS.

Civil actions,
how com-
menced.
Const., pt. 2,
c. 6, art. 5.
1784, 28.
1794, 65, § 1.
R. S. 90, §§ 1, 3,
7-9; 109, §§ 2, 3.
G. S. 123, §§ 9,
10, 13-15; 142,
§§ 2, 3.
P. S. 155, § 17;
161, §§ 13, 14,
17-19; 183, § 2.
3 Mass. 193.

SECTION 15. Actions at law, unless founded on scire facias or other special writs, or unless otherwise authorized by statute or by established practice, shall be commenced by original writs. Such writs shall be signed, sealed and bear teste as required by the constitution, and shall be framed either to summon the defendant, with or without an order to attach his goods or estate, or to attach his goods or estate and, for want thereof, to take his body; or, in an action commenced by the trustee process, to attach his goods or estate in his own hands and also in the hands of the trustee. Original writs shall be in the form heretofore established by law and by the usage and practice of the courts. If changes in their form are necessary in order to adapt them to changes in the law, or for any other sufficient reason, the courts may make such changes, subject to the final control of the supreme judicial court which may, by general rule, regulate such changes in all the courts. Original writs issued by trial justices shall be signed by the justice before whom the action is brought, and shall be dated and filled up like other original writs.

Separate sum-
mons after
attachment.
C. L. 7, § 1.
1700-1, 20, § 1.
1797, 50, § 1.
R. S. 90, § 4.

SECTION 16. A separate summons shall be served on the defendant after an attachment of property on the writ, and the service thereof shall be a sufficient service of the original summons.

G. S. 123, § 11. P. S. 161, § 15. 106 Mass. 217. 124 Mass. 468. 145 Mass. 341.

When writ and
summons may
be combined.
R. S. 90, § 5.
G. S. 123, § 12.
P. S. 161, § 16.
3 Mass. 196.
1 Pick. 497.

SECTION 17. In actions against corporations, and in other actions in which property may be attached, but in which the defendant is not liable to arrest, the writ of attachment and original summons may be combined in one, requiring the officer to attach the goods and estate and to summon the defendant.

Proceedings
if defendant's
name is un-
known.

SECTION 18. If the name of a defendant is not known to the plaintiff, the writ may be issued against him by a fictitious name,

3 and, if duly served, shall not be abated for that cause, but may be
 4 amended upon terms. P. S. 161, § 20. 10 Met. 436. 142 Mass. 562. R. S. 90, § 54. G. S. 123, § 16.

1 SECTION 19. Writs and processes in the supreme judicial court Writs, how
 2 and in the superior court shall be signed, and may be issued, by Const., pt. 2,
 3 the clerk, may be returnable to the same court in any other county, c. 6, art. 5,
 4 may run, and shall be executed and obeyed, throughout the com- 1820, 79, § 3.
 5 monwealth. R. S. 82, § 35;
 G. S. 123, § 17. 90, §§ 2, 6.
 P. S. 161, § 21. 1836, 4, § 9.

1 SECTION 20. Subpœnas on bills in equity shall bear teste of the Subpœna in
 2 first justice of the court who is not a party to the suit, and shall be equity suit,
 3 under the seal of the court and signed by the clerk. P. S. 161, § 22. how issued.
 R. S. 90, § 118.
 G. S. 123, § 18.

1 SECTION 21. An original writ issued by the supreme judicial Writs, when
 2 court or the superior court, if required to be served fourteen days returnable.
 3 before the return day, shall be returnable at the election of the R. S. 90, § 116.
 4 plaintiff at any return day which occurs after the expiration of G. S. 123, § 19.
 5 fourteen days from, and within three months after, the date of P. S. 161, § 23.
 6 the writ; and, if required to be served thirty days before the return 1885, 384, § 1.
 7 day, shall be returnable at the election of the plaintiff at any return
 8 day which occurs after the expiration of thirty days from, and
 9 within three months after, the date of the writ.

1 SECTION 22. An original writ issued by a police, district or Same subject.
 2 municipal court shall be returnable not more than sixty days after P. S. 154, §§ 16,
 3 the date thereof. It may run throughout the county in which the 47.
 4 court issuing it is held, and throughout the commonwealth for the 1892, 148.
 5 purpose of attaching property. It may run into the county in 1893, 396, § 17.
 6 which the defendant, or in which one of several co-defendants, lives 1894, 398, § 2;
 7 for the purpose of service on him in an action against several 431.
 8 defendants who live in different counties which is brought in the
 9 county in which one of them lives or in an action of summary
 10 process under the provisions of chapter one hundred and eighty-one
 11 or in an action by the trustee process.

1 SECTION 23. An original writ which is issued by a trial justice Same subject.
 2 shall be returnable not more than sixty days after the date thereof. 1897, 8, § 1.
 3 It may run throughout the commonwealth for the purpose of 1783, 42, § 1.
 4 attaching property, and it may run into the county in which the R. S. 85, § 7.
 5 defendant lives for the purpose of service on him in an action of 1898, 121, § 1.
 6 summary process under the provisions of chapter one hundred and G. S. 120, §§ 6, 7.
 7 eighty-one or in an action by the trustee process. If an attach- P. S. 155, §§ 17,
 8 ment is made in a county other than that in which the writ is re- 18.
 9 turnable, not more than one dollar and fifty cents shall be chargeable 1892, 148.
 10 to or taxed against the defendant for the service of the writ. 2 Allen, 531.
 7 Allen, 151.

1 SECTION 24. The first Monday of every month shall be a return Return days
 2 day in every county for writs, processes, notices to appear and cita- in supreme
 3 tions in all actions, suits and other civil proceedings in the supreme judicial and
 4 judicial court and the superior court. Such writs, processes, superior courts.
 5 notices and citations may be made returnable, at the election of R. S. 90, § 116.
 6 the party who takes out the same, at any return day within three G. S. 123, § 19.
 P. S. 161, § 23.
 1885, 384, § 1.
 153 Mass. 104.

months after the date thereof; but said courts may make them returnable at other times. If they issue out of the supreme judicial court for the county of Dukes County or Nantucket, they shall be returnable in the county of Bristol.

Return days
in inferior
courts.
1893, 396, § 22.

SECTION 25. Saturday of each week shall be the return day for writs, processes, notices to appear and citations in all civil actions and proceedings in police, district and municipal courts; but said courts may make them returnable at other times.

SERVICE OF WRITS.

Directions for
attachment or
arrest.
R. S. 90, § 56.
G. S. 123, § 107.
P. S. 161, § 26.
4 Mass. 60.

SECTION 26. If the writ requires the officer to attach the goods or estate of the defendant and for want thereof to take his body, the plaintiff or his attorney may by written or verbal directions require the officer to serve the writ by an attachment of goods or estate or by the arrest of the defendant, if such arrest is authorized, and the officer shall serve the writ according to such directions.

Service of
original writs.
C. L. 330, § 4.
1699-1700, 3, § 4.
1783, 42, § 1.
R. S. 85, § 8; 90,
§ 21.
G. S. 123, § 21.
P. S. 154, § 16;
161, § 27.
1893, 396, § 17.
1894, 398, § 2.
5 Met. 334.
12 Cush. 78.

SECTION 27. An original writ which is issued by the supreme judicial court or the superior court shall be served fourteen days at least before the return day. An original writ which is issued by a police, district or municipal court or trial justice may be directed to and served by any officer who is qualified to serve civil process and shall be served not less than seven nor more than sixty days before the return day; but if such writ is to be served in a county other than that in which the court issuing it is held, it shall, except in trustee process, be served at least fourteen days before the return day.

Service upon
certain corpo-
rations.
1694-5, 15, § 3.
1726-7, 15, § 3.
1783, 33, § 6.
1785, 75, § 8.

SECTION 28. The writ in an action against a county, city, town, parish or religious society, or against proprietors of wharves, general fields or real estate lying in common, shall be served thirty days at least before the return day.

R. S. 90, § 22.

G. S. 123, § 22.

P. S. 161, § 28.

109 Mass. 313.

Service of
summons.
1797, 50, § 1.
R. S. 90, § 39.
G. S. 123, § 23.
P. S. 161, § 29.
124 Mass. 468.
135 Mass. 412.
145 Mass. 341.
171 Mass. 303.

SECTION 29. A separate summons which is served after an attachment of property shall be served by delivering it to the defendant or by leaving it for him as hereinafter provided; and an original summons without an attachment shall be served by reading it to the defendant, by delivering to him a copy thereof attested by the officer who serves it or by leaving such copy for him as hereinafter provided.

Same subject.
R. S. 90, § 40.
G. S. 123, § 24.
P. S. 161, § 30.

SECTION 30. The separate summons may be served at any time after the attachment has been made, if it is served the number of days before the return day required for the service of the original writ; and a certificate of the service of the summons shall be indorsed on the original writ.

— If no per-
sonal service.
1700-1, 20, § 1.

SECTION 31. If the summons is not served personally on the defendant, the original or a copy, as the case may be, shall be left

3 at his last and usual place of abode, if he has any within the com-
 4 monwealth known to the officer. If he has none, it shall be left
 5 with his tenant, agent or attorney, if he has any within the com-
 6 monwealth known to the officer. If he has no such last and usual
 7 place of abode and no tenant, agent or attorney, no service on
 8 him shall be required except as provided in the three following
 9 sections.

1736-7, 12.
 1797, 50, §§ 1, 3.
 R. S. 90, §§ 41,
 45.
 G. S. 123, § 25.
 P. S. 161, § 31.
 6 Cush. 354.
 13 Gray, 270.
 15 Gray, 353.
 131 Mass. 359.
 140 Mass. 488.

1 SECTION 32. If an absent defendant whose property has been
 2 attached is sued with one or more others on a joint contract, and
 3 he has no such last and usual place of abode, and no tenant, agent
 4 or attorney, within the commonwealth, the summons for him shall
 5 be left with one of the co-defendants, if there is any within the
 6 commonwealth.

Service of
 summons
 on absent
 defendant, if
 co-defendant
 here.
 1797, 50, § 6.
 R. S. 90, § 46.
 G. S. 123, § 26.

P. S. 161, § 32. 6 Cush. 354. 3 Gray, 508.

1 SECTION 33. If the tenant in a real action is out of the com-
 2 monwealth and has no last and usual place of abode here known to
 3 the demandant, the summons or an attested copy shall, in addition
 4 to any other service required, be left for him with the tenant or
 5 occupant, if any, of the land demanded; otherwise, it shall be left
 6 in a conspicuous place on the land.

—in real
 action against
 absent tenant.
 1700-1, 20, § 2.
 R. S. 90, § 47.
 G. S. 123, § 27.
 P. S. 161, § 33.
 2 Cush. 32.

1 SECTION 34. If the defendant is out of the commonwealth, or if
 2 his residence is not known to the officer, and no personal service is
 3 made on him, he shall, in addition to the service herein prescribed,
 4 be entitled to further notice of the action as provided in chapter
 5 one hundred and seventy.

Further notice
 to absent de-
 fendant.
 R. S. 90, § 48.
 G. S. 123, § 28.
 P. S. 161, § 34.
 6 Cush. 354.

11 Met. 370. 10 Gray, 164. 4 Allen, 94.
 9 Gray, 311. 12 Gray, 198. 105 Mass. 93.

1 SECTION 35. In an action against a county, the summons shall be
 2 served by leaving an attested copy thereof with the county treas-
 3 urer and with one of the county commissioners or one of the
 4 officers who by law exercise the powers of county commissioners.
 5 In an action against a city, town, parish or religious society, or
 6 against the proprietors of wharves, general fields or real estate
 7 lying in common, the summons shall be served by leaving an
 8 attested copy thereof with the treasurer of the corporation or of the
 9 proprietors, and another like copy with the mayor, clerk or one of
 10 the aldermen of the city, or with one of the selectmen of the town,
 11 or with one of the assessors or standing committee of the parish or
 12 religious society, or with one of the proprietors of such land or other
 13 estate, as the case may be: and if no such treasurer is found within
 14 the county, the copy shall be left with one of the other officers
 15 before mentioned, or with one of said proprietors; and if there are
 16 no such officers, the copy shall be left with one of the inhabitants
 17 of the county; city or town, or with one of the members of the
 18 corporation.

Service of
 summons on
 municipal, etc.,
 corporations.
 1835, 115.
 R. S. 90, § 42.
 G. S. 123, § 29.
 1865, 136.
 P. S. 161, § 35.

1 SECTION 36. In an action against a corporation not mentioned
 2 in the preceding section, the summons shall be served by leaving
 3 the original or copy, as the case may be, with the clerk, cashier,
 4 secretary, agent or any other officer who has charge of its business;

—on other cor-
 porations.
 1833, 124.
 R. S. 90, § 43.
 G. S. 123, § 30.
 P. S. 161, § 36.

4 Allen, 357.
173 Mass. 28.

and if no such officer is found within the county, the summons 5
may be served on any member of the corporation. 6

Service of
summons in
suits in equity.
R. S. 90, §§ 118,
119.
G. S. 123, § 31.
P. S. 161, § 37.

SECTION 37. A writ of original summons or subpoena issued in 1
a suit in equity shall be served the same number of days before 2
the return day and in the same manner as an original writ in an 3
action at law in the same court. 4

ATTACHMENT OF PROPERTY — GENERAL PROVISIONS.

Property liable
to attachment.
1735-6, 9, § 1.
1783, 57, § 4.
1798, 77, § 3.
R. S. 90, §§ 23,
24.
1833, 269, § 2.
1839, 183.
G. S. 123, § 32.
P. S. 161, § 38.
17 Mass. 405.
3 Pick. 338.
16 Pick. 144.
2 Met. 510.
8 Gray, 517.
14 Gray, 220.
8 Allen, 583.
101 Mass. 105.
106 Mass. 506.

SECTION 38. All real and personal property which is liable to 1
be taken on execution, except such personal property as, from its 2
nature or situation, has been considered as exempt according to the 3
principles of the common law as adopted and practised in this com- 4
monwealth, and except as provided in the two following sections, 5
may be attached upon the original writ in any action in which debt 6
or damages are recoverable, and may be held as security to satisfy 7
such judgment as the plaintiff may recover: but no attachment of 8
land shall be made on a writ returnable before a police, district or 9
municipal court or a trial justice unless the debt or damages de- 10
manded therein exceed twenty dollars. 119 Mass. 241. 11

Attachment
of cars and
vessels.
1875, 144.
1881, 124.
P. S. 161, § 39.
140 Mass. 131.

SECTION 39. Railroad cars and engines in use and making reg- 1
ular passages on railroads, and steamboats so in use upon water- 2
routes, shall not, within forty-eight hours previous to their fixed 3
time of departure, be attached upon mesne process unless the 4
officer who makes an attachment of such property has first demanded 5
of the owners or managers thereof other property upon which to 6
make such attachment equal in value to the ad damnum in the writ 7
and such owners or managers have refused or neglected to comply 8
with said demand. Such attachment shall be void unless the officer 9
certifies in his return that he has made such demand and that the 10
owners or managers have refused or neglected to comply there- 11
with; and no ship or vessel shall be attached on mesne process 12
in an action at law unless a declaration is inserted in the writ 13
before service thereof, nor unless the plaintiff or a person in his 14
behalf makes affidavit and proves to the satisfaction of a justice 15
of a court of record, a master in chancery or, except in the county 16
of Suffolk, a trial justice or justice of the peace that he has a 17
good cause of action and reasonable expectation of recovering an 18
amount, exclusive of all costs, equal to at least one-third the 19
damages demanded in such writ, which affidavit and the certificate 20
of the magistrate that he is satisfied that the same is true shall be 21
annexed to the writ. 22

—of property
of newspaper
offices.
1890, 377.

SECTION 40. The press, type, stands, cases, paper and other per- 1
sonal property used in printing and publishing newspapers shall 2
not, within forty-eight hours previous to the issue of any edition of 3
a newspaper be attached upon mesne process unless the officer who 4
makes an attachment of such property has, at least twenty-four hours 5
previously thereto, demanded of the owners or managers thereof 6
other property upon which to make such attachment equal in 7

8 value to the amount of the ad damnum of the writ and such owners
9 or managers have refused or neglected to comply with such de-
10 mand. Such attachment shall be void unless the officer certifies in
11 his return that he has made such demand, the time when it was
12 made and that it has been refused and not complied with. Such
13 attachment, made after such demand, shall take effect from the time
14 demand was made, so as to take priority of any mortgage, pledge,
15 conveyance or attachment made subsequent to the time of making
16 such demand.

1 SECTION 41. Successive attachments may be made upon the
2 same writ by one or more officers and in one or more counties, at
3 any time before the service of the summons; but no attachment
4 shall be made thereon after the summons has been served.

Successive
attachments on
the same writ.
R. S. 90, § 55.
G. S. 123, § 33.
P. S. 161, § 40.

1 SECTION 42. Personal property which has been attached or taken
2 on execution by a constable may be further attached or taken on
3 execution by a deputy sheriff or other competent officer, upon any
4 writ of attachment or execution which such constable is not quali-
5 fied to serve; and thereupon such constable shall make return upon
6 and deliver his writ, with the possession of the property, to such
7 deputy sheriff or other officer, who shall complete the service
8 thereof. If such writ of attachment has been returned into court,
9 the constable shall file in the case a certificate of the fact of such
10 surrender of possession.

— upon differ-
ent writs.
1870, 310.
P. S. 161, § 41.

1 SECTION 43. The officer, if necessary, may appoint a keeper of
2 personal property which has been attached or taken on execution,
3 and in such case shall, upon the written request of the defendant,
4 remove such property or the keeper without unreasonable delay.

Keeper.
1878, 272, §§ 1, 2.
P. S. 161, § 42.
1878, 272, § 3.
16 Pick. 144.
122 Mass. 541.
155 Mass. 261.

1 SECTION 44. Personal property which has been attached may,
2 subject to the provisions of the preceding section, be kept upon the
3 premises where it is found unless the owner or occupant of the
4 premises in writing requests the officer to remove his keeper there-
5 from; and if the defendant in writing requests the officer to allow
6 property which has been attached upon the premises of the de-
7 fendant to remain there until he may give bond to dissolve the
8 attachment, the property shall not be removed until he has had
9 reasonable opportunity to give such bond.

Property may
be kept on
premises, until.
1878, 272, § 3.
P. S. 161, § 43.
12 Gray, 401.
101 Mass. 467.
120 Mass. 228.
155 Mass. 261.

1 SECTION 45. If an attachment is made of articles of personal
2 property which, by reason of their bulk or for other cause, cannot
3 be immediately removed, a certified copy of the writ, without the
4 declaration, and of the return of the attachment may, within three
5 days after the attachment, be deposited in the office of the clerk of
6 the city or town in which it is made; and such attachment shall
7 be as valid and effectual as if the articles had been retained in the
8 possession and custody of the officer.

Attachment of
bulky goods.
R. S. 90, §§ 33,
34.
G. S. 123, § 57.
P. S. 161, § 69.
8 Pick. 402.
4 Cush. 425.
4 Allen, 329.
118 Mass. 502.
119 Mass. 241.
140 Mass. 131.
150 Mass. 159.
157 Mass. 384.

1 SECTION 46. The clerk shall receive and file all such copies,
2 noting thereon the time when received, and keep them safely in

Same subject.
R. S. 90, § 35.
G. S. 123, § 58.
P. S. 161, § 70.

170 Mass. 142. 177 Mass. 526.

his office, and also enter a memorandum thereof, in the order in which they are received, in the books kept for recording mortgages of personal property. Such entry shall contain the names of the parties to the action and the date of the entry. The clerk's fee for this service shall be twenty-five cents, which shall be paid by the officer and included in his charge for the service of the writ.

Attachment of
proceeds of
property sold.
R. S. 90, § 5.
R. S. 90, §§ 71,
72.
G. S. 123, § 34.
P. S. 161, § 44.

SECTION 47. If personal property has been sold or disposed of by consent of the parties, or after an appraisal as hereinafter provided, the proceeds, while remaining in the hands of the officer, shall be liable to be further attached by him as the property of the original defendant, in the manner in which the property itself might have been attached; and shall be held and disposed of in the same manner as if the attachment had been made on the property itself before the sale thereof. But the foregoing provision shall not prevent the officer from paying over to the defendant the surplus of the proceeds of such sale, after retaining enough to satisfy all the attachments actually existing at the time of such payment.

Further
attachment of
property re-
plevied.
R. S. 90, § 99.
G. S. 123, § 35.
P. S. 161, § 45.

SECTION 48. Property which has been replevied from an officer who has attached it shall be considered as remaining in his custody and control so as to be liable to further successive attachments, as if it had remained in his possession.

Plaintiff in re-
plevin liable
for value.
R. S. 90, § 100.
G. S. 123, § 36.
P. S. 161, § 46.

SECTION 49. If there is judgment for a return of the property so replevied, the plaintiff in replevin and his sureties shall be liable for the whole of the property or the value thereof, although the attachment for which it is finally held was made after the property was replevied.

Attachment
after death,
etc., of first
attaching
officer.
R. S. 90, § 101.
G. S. 123, § 37.
P. S. 161, § 47.

SECTION 50. If an officer dies or is removed from office while an attachment which he has made remains in force, the attached property, whether replevied or remaining in possession of the officer or of his executor or administrator, may be further attached by any other officer so as to bind it or its proceeds, as if the later attachment had been made by the first-mentioned officer.

Proceedings in
such case.
R. S. 90, §§ 102,
103.
G. S. 123, § 38.
P. S. 161, § 48.

SECTION 51. The officer who makes such later attachment shall not take the property itself, but he shall make a return of an attachment in the common form, stating by whom the property was previously attached, and, if it has not been replevied, shall leave a certified copy of the writ, without the declaration, and of the return of that attachment with the former officer if living or, if he is dead, with his executor or administrator or whoever then has possession of the property. If the property has been replevied, and the officer who made the original attachment is dead, he shall leave such copy with the plaintiff in replevin or with his executor or administrator, and the attachment shall be considered as made when such copy is delivered in either of the modes before provided.

Mode of attach-
ing replevied
property.
R. S. 90, § 104.
G. S. 123, § 39.
P. S. 161, § 49.

SECTION 52. Property which has been replevied from an attaching officer shall not be further attached as the property of the original defendant in any manner other than is provided in section

4 forty-two and in the four preceding sections, so long as it is held
5 by the plaintiff in replevin or by any person holding under him,
6 unless the original defendant has acquired a new title thereto.

1 SECTION 53. Property which has been attached by an officer, Attachment to
2 whether remaining in his custody at the time of his death or taken continue after
3 from him by replevin or otherwise, and also all claims for dam- death of attach-
4 ages to property so taken from him, shall remain subject to the ing officer.
5 attachment as if the officer had lived, and shall not be considered R. S. 90, § 95.
6 as assets in the hands of his executor or administrator. G. S. 123, § 40.
P. S. 161, § 50.

1 SECTION 54. An attachment of land which is subject to a mort- Attachment of
2 gage or other encumbrance shall, if the mortgage is redeemed or encumbered
3 the encumbrance is removed before the levy of the execution, hold land.
4 the land discharged of the mortgage or encumbrance, and execution I-15, 137, § 3.
5 may be levied in the same manner and with the same effect as if it R. S. 90, § 32.
6 had never existed. G. S. 123, § 41.
P. S. 161, § 51.
13 Mass. 51.
106 Mass. 507.

1 SECTION 55. Property which has been attached shall be held Attachment
2 for thirty days after final judgment for the plaintiff so that it may effective for
3 be taken on execution: but if attached in the county of Nantucket thirty days
4 and judgment is rendered in another county, or if judgment is after judg-
5 rendered in the county of Nantucket and it was attached in another ment.
6 county, it shall be held for sixty days after final judgment, unless C. L. 144, § 1.
7 the attachment is sooner dissolved as hereinafter provided. 1701-2, 5, § 11.
1784, 28, § 11.
1806, 107.
R. S. 90, § 25.
G. S. 123, § 42.
P. S. 161, § 52.

11 Mass. 204.

106 Mass. 506.

118 Mass. 514.

1 SECTION 56. Property which has been attached in suits in equity — for thirty
2 shall be held for thirty days after the right of appeal from a final days after
3 decree expires. right of appeal
in equity ex-
pires.

1877, 178, § 6.

P. S. 161, § 53.

138 Mass. 209.

1 SECTION 57. The final judgment intended in sections fifty-five, Final judg-
2 one hundred and eleven and one hundred and sixteen is that which ment defined.
3 is rendered in the original action, whether upon appeal or other. R. S. 90, § 27.
4 wise, and not such as may be rendered upon a writ of error or writ G. S. 123, § 44.
5 of review. P. S. 161, § 55.
167 Mass. 222.
174 Mass. 349.

ATTACHMENT OF REAL ESTATE AND LEASEHOLD ESTATES.

1 SECTION 58. In attaching land, or a right or interest therein, the Attachment of
2 officer need not enter upon the land or be within view of it. In land and lease-
3 attaching leasehold estates, the officer shall state in his return in holds.
4 general terms the leasehold property attached. R. S. 90, § 31.
1847, 267, § 3.
G. S. 123, § 50.
P. S. 161, § 61.

13 Mass. 128.

11 Pick. 341.

142 Mass. 212.

1 SECTION 59. No attachment on mesne process of land or of any Deposit of
2 leasehold estate shall be valid against a subsequent attaching creditor. copy of writ.
3 or against a subsequent purchaser in good faith and for value, unless R. S. 90, § 28.
4 the officer deposits a certified copy of the original writ, without the 1839, 89.
5 declaration, and so much of his return thereon as relates to the 1847, 267, § 3.
6 attachment of the estate in the registry of deeds for the county or G. S. 123, § 51.
7 district in which the land lies. 1870, 264, § 1.
1873, 297, § 1.
P. S. 161, § 62.
1889, 401.
1 Met. 212.

10 Met. 142.

11 Met. 244.

Duty and fees
of officer.
1838, 186.
1839, 89.
1847, 267, § 3.
G. S. 123, § 52.
1870, 264, § 1.

SECTION 60. The officer who makes such attachment shall deposit 1
such copy in the registry of deeds; and he shall be entitled to re- 2
ceive four cents a mile for his travel from the place of service to the 3
registry, with his fee for the copy. 4

1873, 297, § 1.

P. S. 161, § 63.

— of register.
R. S. 90, § 30.
1856, 209.
G. S. 123, § 53.
1870, 264, § 2.
1873, 297, § 2.
P. S. 161, § 64.
118 Mass. 517.

SECTION 61. The register of deeds shall note on every such copy 1
the day, hour and minute when he receives it, and shall file it in his 2
office. He shall also enter in a book which he shall keep for that 3
purpose the name of the plaintiff and the name of each defendant 4
whose land is attached, the time when the attachment was made 5
and the time when the copy was deposited. His fee in each case 6
shall be twenty-five cents, which shall be paid upon the deposit 7
of the copy and may be taxed for the plaintiff in his bill of costs. 8
If a dissolution of an attachment which has been so entered in a reg- 9
istry of deeds appears of record in the court in which the action in 10
which the attachment was made is pending, the clerk of such court 11
shall forward to such register a certificate of such dissolution, stating 12
how such dissolution was made, and the register shall file the cer- 13
tificate with the copy of the writ and shall enter it in his docket of 14
attachments. 15

When such
attachment
takes effect.
R. S. 90, § 29.
G. S. 123, § 54.
1869, 70.
P. S. 161, § 65.
10 Allen, 494.
129 Mass. 27.
158 Mass. 385.

SECTION 62. If the copy of the writ is deposited, as aforesaid, 1
within three days after the day when the attachment was made, the 2
attachment shall take effect from the time it was made; otherwise, 3
from the time when the copy is so deposited; but attachments of 4
land, and of leasehold estates which have an original term of more 5
than seven years, shall not be valid against purchasers in good faith 6
and for value, other than the defendant, except from the time when 7
the copy is deposited as aforesaid. 8

Attachment of
land fraudu-
lently con-
veyed, etc.
1844, 107, § 2.
1853, 453.
G. S. 123, § 55.
P. S. 161, § 66.
6 Gray, 520.
11 Gray, 217.
9 Allen, 101.
90 Mass. 479.
128 Mass. 427.
130 Mass. 578.
147 Mass. 23.

SECTION 63. If an attachment on mesne process is made of land, 1
or of a right or interest therein, which has been fraudulently con- 2
veyed by the debtor to a third person, or which has been pur- 3
chased by the debtor, or the purchase money of which has been 4
directly or indirectly paid by him, and the title thereto has been re- 5
tained in the vendor or conveyed to another person, with the intent 6
and for the purpose of fraudulently securing the land from attach- 7
ment by a creditor of such debtor, or with the intent and for the 8
purpose of delaying, defeating or defrauding creditors, it shall not 9
be valid against a subsequent attaching creditor, or against a sub- 10
sequent purchaser in good faith and for value, unless the officer in 11
addition to the return required by the preceding sections also re- 12
turns a brief description of the land which has been attached, by its 13
locality, situation, boundaries or otherwise as known to him, and 14
the names of the persons in whom the record or legal title stands. 15

Entry of name
of holder of
legal title, etc.
1844, 107, § 3.
G. S. 123, § 56.
1870, 264, § 1.
1873, 297, § 1.
P. S. 161, § 67.
118 Mass. 517.

SECTION 64. The register in such case, in addition to the names 1
of the parties to the writ which he is required to enter as provided 2
in section sixty-one, shall also enter in his docket of attachments 3
the names of the persons in whom the record or legal title stands, as 4
returned by the officer, in the same manner as if the estate of such 5
persons were attached as defendants in the writ. 6

1 SECTION 65. Registers of deeds shall perform the same duties
2 relative to the filing and entering of copies of writs and other papers
3 in actions commenced in the courts of the United States which
4 affect the title to land by attachment or otherwise as are required
5 relative to the filing and entering of such papers in such actions
6 commenced in the courts of this commonwealth.

Duties of regis-
ters as to
papers in
actions in
United States
courts.
1873, 297, § 3.
P. S. 161, § 68.

ATTACHMENT OF CORPORATE SHARES.

1 SECTION 66. The share or interest of a stockholder in a corpora-
2 tion organized under the laws of this commonwealth or of the United
3 States and located or having a general office in this commonwealth
4 may be attached by leaving an attested copy of the writ, without
5 the declaration, and of the return of the attachment, with the clerk,
6 treasurer or cashier of the company, if there is such officer; other-
7 wise, with any officer or person who has at the time the custody of
8 the books and papers of the corporation.

Attachment of
corporate
shares.
1798, 59, § 9.
1804, 83, §§ 1, 5.
G. S. 40, § 13;
90, § 36.
G. S. 123, § 59.
1870, 291, § 1.
P. S. 161, § 71.
138 Mass. 246.
149 Mass. 167.

1 SECTION 67. A share or interest so attached, with all the divi-
2 dends thereafter accruing thereon, shall, except as otherwise pro-
3 vided in section thirty-six of chapter one hundred and nine, be
4 held as security to satisfy the final judgment in the action, in like
5 manner as other personal property is held.

— effect.
1804, 83, § 2.
R. S. 90, § 37.
G. S. 123, § 60.
1870, 291, § 1.
P. S. 161, § 72.

1 SECTION 68. If the officer who has a writ of attachment against
2 such stockholder exhibits the writ to the officer of the company who
3 is appointed to keep a record or account of the shares or interest
4 of the stockholders therein, and requests a certificate of the number
5 of shares or amount of the interest held by the defendant, such
6 officer of the company shall give such certificate to the officer who
7 holds the writ. If he unreasonably refuses so to do, or if he wilfully
8 gives a false certificate thereof, he shall be liable in an action of
9 tort for double the amount of the damages caused by such refusal
10 or false certificate, unless the judgment is satisfied by the original
11 defendant.

Penalty on cor-
porate officer.
R. S. 90, § 38.
G. S. 123, § 61.
P. S. 161, § 73.

ATTACHMENT OF ENCUMBERED PERSONALTY.

1 SECTION 69. Personal property of a debtor which is subject to
2 a mortgage, pledge or lien, and of which the debtor has the right of
3 redemption, may be attached and held as if it were unencumbered,
4 if the attaching creditor pays or tenders to the mortgagee, pledgee
5 or holder of the property the amount for which it is so liable within
6 ten days after demand as hereinafter provided.

Attachment of
mortgaged
property.
1829, 124, § 2.
R. S. 90, § 78.
1844, 148, § 1.
G. S. 123, § 62.
P. S. 161, § 74.
11 Met. 226.
13 Met. 204.

1 Cush. 278.	1 Allen, 29.	110 Mass. 28, 167.	142 Mass. 15.
3 Cush. 306.	6 Allen, 295.	119 Mass. 535.	143 Mass. 123.
14 Gray, 566.	106 Mass. 114.	122 Mass. 303.	159 Mass. 204.

1 SECTION 70. The mortgagee, pledgee or holder shall, when de-
2 manding payment of the money due to him, state in writing a just
3 and true account of the debt or demand for which the property is
4 liable to him and deliver it to the attaching creditor or officer. If
5 the same is not paid or tendered to him within ten days thereafter,
6 the attachment shall be dissolved, the property shall be restored

Mortgagee to
state account.
1829, 124, § 3.
R. S. 90, § 79.
1844, 148, § 1.
G. S. 123, § 63.
P. S. 161, § 75.
1 Met. 294, 325,
515.
3 Met. 144, 268.

12 Met. 308.
3 Cush. 306, 575.
3 Gray, 490.
4 Gray, 550.
14 Gray, 123.
1 Allen, 29.

to him and the attaching creditor shall be liable to him for any damages he has sustained by the attachment. 7
8

3 Allen, 241, 427.	100 Mass. 323.	111 Mass. 273.	151 Mass. 497.
6 Allen, 80.	103 Mass. 335.	125 Mass. 164, 582.	157 Mass. 228.
14 Allen, 222.	105 Mass. 49.	140 Mass. 154.	166 Mass. 1.
98 Mass. 510.	110 Mass. 365.	145 Mass. 270, 571.	170 Mass. 517, 523.

Penalty for excessive demand.
1829, 124, § 3.
R. S. 90, § 80.
G. S. 123, § 64.
P. S. 161, § 76.

SECTION 71. If he demands and receives more than the amount due to him, he shall be liable in an action by the attaching creditor for money had and received for the excess, with interest thereon at the rate of twelve per cent a year. 1
2
3
4

Debt to be repaid out of proceeds of sales.
R. S. 90, § 81.
G. S. 123, § 65.
P. S. 161, § 77.

SECTION 72. If property which has been attached and redeemed by the attaching creditor, as aforesaid, is sold on mesne process or on execution, the proceeds thereof, after deducting the charges of the sale, shall be first applied to repay to the attaching creditor the amount so paid by him, with interest. 1
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4
5

— or by defendant.
R. S. 90, § 82.
G. S. 123, § 66.
P. S. 161, § 78.

SECTION 73. If the attaching creditor, after having redeemed the property, does not recover judgment, he may nevertheless hold the property until the debtor repays to him the amount which he paid for the redemption, or as much thereof as the debtor would have been obliged to pay to the mortgagee, pledgee or holder of the property, if it had not been attached, with interest from the time when it was demanded of the debtor. 1
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Attachment of mortgaged personality in debtor's possession.
1844, 148, § 2.
G. S. 123, § 67.
P. S. 161, § 79.
6 Cush. 106.
9 Gray, 45.
8 Allen, 273.
29 Mass. 172.
102 Mass. 423.
107 Mass. 122.

SECTION 74. Personal property which is subject to a mortgage and is in the possession of the mortgagor may be attached as if unencumbered; and the mortgagee or his assigns may be summoned in the same action in which the property is attached as the trustee of the mortgagor or his assigns to answer such questions as may be put to him or them by the court or by its order relative to the consideration of the mortgage and the amount due thereon. 1
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114 Mass. 60.	133 Mass. 78.	140 Mass. 208.	154 Mass. 34.
121 Mass. 96.	134 Mass. 347.	148 Mass. 566.	175 Mass. 144.

Determination of amount due.
1844, 148, § 3.
G. S. 123, § 68.
P. S. 161, § 80.
3 Cush. 306.
128 Mass. 102.
133 Mass. 78.
140 Mass. 208.
144 Mass. 385.
154 Mass. 34.
170 Mass. 469.

SECTION 75. If upon such examination, or upon the verdict of a jury as hereinafter provided, it appears that the mortgage is valid, the court, having first ascertained the amount justly due upon it, may direct the attaching creditor to pay the same to the mortgagee or his assigns within such time as it orders; and if he does not pay or tender the amount within the time prescribed, the attachment shall be void and the property shall be restored. 1
2
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— of validity of mortgage.
1844, 148, § 4.
G. S. 123, § 69.
P. S. 161, § 81.

SECTION 76. If the attaching creditor denies the validity of the mortgage and moves that the validity may be tried by a jury, the court shall order such trial upon an issue which shall be framed under its direction and if, upon such examination or verdict, the mortgage is adjudged valid, the mortgagee or his assigns shall recover his costs. 1
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Creditor to retain amount paid by him, etc.
1844, 148, § 5.
G. S. 123, § 70.
P. S. 161, § 82.

SECTION 77. When the creditor has paid to the mortgagee or his assigns the amount ordered by the court, he may retain out of the proceeds of the property attached, when sold, the amount so paid with interest, and the balance shall be applied to the payment of his debt. 1
2
3
4
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1 SECTION 78. If the attaching creditor, after having paid the
 2 amount ordered by the court, does not recover judgment, he may
 3 nevertheless hold the property until the debtor has repaid with
 4 interest the amount so paid. G. S. 123, § 71. P. S. 161, § 83.

Creditor not
 recovering
 judgment to
 hold property
 until repaid.
 1844, 148, § 6.

SUPPLEMENTARY PROCESS.

1 SECTION 79. If the service of a writ, process or order is defec-
 2 tive or insufficient, the court or tribunal to which it is returnable
 3 may, upon motion of the plaintiff or petitioner, issue further writs,
 4 processes and orders, which shall be served in such manner as may
 5 be therein directed; and upon due service thereof, the court or
 6 tribunal shall thereby acquire the same jurisdiction of the subject
 7 and of the parties as it would have obtained if such service had
 8 been made in pursuance of the original writ, process or order. The
 9 action, suit or proceeding shall be continued from time to time
 10 until such service is made.

Further service
 after defective
 service.
 1874, 187.
 P. S. 161, § 84.
 140 Mass. 342.

1 SECTION 80. At any time during the pendency of an action,
 2 suit, libel, petition or other proceeding at law or in equity, upon
 3 the commencement of which an arrest or attachment is authorized
 4 by law, the court or trial justice for cause may, on motion ex parte,
 5 order such arrest of the defendant or such attachment of his prop-
 6 erty by the trustee process or otherwise to secure the judgment or
 7 decree which the plaintiff may obtain in said cause; but no arrest
 8 of the defendant shall be authorized unless the plaintiff or a person
 9 in his behalf makes affidavit and proves to the satisfaction of the
 10 court or trial justice the same facts as are required to be proved to
 11 authorize an arrest on mesne process. Such arrest or attachment
 12 shall be subject to all the provisions of law relative to arrest and
 13 attachment upon mesne process, so far as applicable.

Attachments
 during pen-
 dency of suit.
 1876, 167, §§ 1, 4.
 1877, 18.
 1879, 53.
 P. S. 161, §§ 85,
 88.

1 SECTION 81. A precept for such arrest or attachment shall be in
 2 the same form, so far as practicable, as an original writ of capias
 3 and attachment; but the supreme judicial court may by general
 4 rules establish forms therefor. Such precept may be served by an
 5 officer authorized to serve the original process in the cause, and
 6 shall be returnable as may be ordered by the court which issues it.

Precepts, form
 of.
 1876, 167, §§ 2, 3.
 P. S. 161, §§ 86,
 87.

SALE OF PERSONAL PROPERTY ATTACHED.

1 SECTION 82. Personal property which has been attached on
 2 one or more writs may, if the debtor and all the attaching creditors
 3 consent in writing to the sale, subject to the provisions of sections
 4 sixty-nine to seventy-eight, inclusive, be sold by the attaching
 5 officer in the manner provided by law for selling like property on
 6 execution; and the proceeds of the sale, after deducting the neces-
 7 sary charges, shall be held by the officer subject to the attachments
 8 and be disposed of as the property would have been held and
 9 disposed of had it remained unsold. 125 Mass. 278. 154 Mass. 34.

Sale of prop-
 erty attached.
 1822, 93, § 1.
 R. S. 90, § 57.
 G. S. 123, § 72.
 P. S. 161, § 89.
 17 Pick. 429.
 18 Pick. 407.
 1 Met. 34.
 4 Met. 137, 504.
 6 Met. 94.
 10 Met. 236.
 4 Cuslt. 393.
 101 Mass. 259.

1 SECTION 83. If an attachment is made of animals or of goods
 2 which are liable to perish, waste or greatly decrease in value by
 3 keeping, or which cannot be kept without great and disproportion-

Appraisal and
 sale of perish-
 able property.
 1822, 93, § 2.
 R. S. 90, § 58.

G. S. 123, § 73.
P. S. 161, § 90.
18 Pick. 407.
3 Allen, 207.
97 Mass. 67.
101 Mass. 259.
114 Mass. 60.
154 Mass. 34.

ate expense, and the parties do not consent to a sale thereof as before provided, the property so attached shall, subject to the provisions of sections sixty-nine to seventy-eight, inclusive, upon the application of either of the parties interested to the attaching officer, be examined, appraised and sold or otherwise disposed of in the manner following.

Appraisal and
sale of perish-
able property;
proceedings.
1822, 93, § 2.
R. S. 90, § 59.
1851, l, § 3; 58;
257.
G. S. 123, § 74.
P. S. 161, § 91.
6 Allen, 505.

SECTION 84. Upon such application, the attaching officer shall give notice to all the other parties or their attorneys, prepare a schedule of the goods and cause three disinterested persons acquainted with the nature and value of such goods to be appointed and sworn before a magistrate or the attaching officer to the faithful performance of their duty as appraisers. 130 Mass. 247.

Notice to ab-
sent defendant.
1837, 185.
G. S. 123, § 75.
P. S. 161, § 92.

SECTION 85. If the defendant is not within the commonwealth and has no attorney therein, the notice in writing shall be left at his last and usual place of abode in the commonwealth, if he has any; otherwise, it shall be delivered to, or left at the dwelling house or place of business of, the person who had possession of the property at the time of the attachment.

Appraisers,
how appointed.
R. S. 90, § 60.
1851, 257.
G. S. 123, § 76.
P. S. 161, § 93.
101 Mass. 259.

SECTION 86. One appraiser shall be appointed by the creditor or creditors in the several actions, one by the debtor or debtors, and one by the officer; and if the debtors or creditors, respectively, neglect to appoint such appraiser, or do not agree in the nomination, the officer shall appoint one in their behalf.

Sale after
appraisal.
R. S. 90, § 61.
G. S. 123, § 77.
P. S. 161, § 94.
18 Pick. 407.
4 Cush. 333.
130 Mass. 247.

SECTION 87. The appraisers shall examine the attached property and, if in their opinion it, or a part thereof, is liable to perish or waste or to greatly decrease in value by keeping or cannot be kept without great and disproportionate expense, they shall appraise the value thereof and the property shall thereupon be sold by the officer and the proceeds held and disposed of as provided in section eighty-two, unless the goods are taken by the debtor as provided in the following section.

— or delivered
to defendant.
1822, 93, § 3.
R. S. 90, § 62.
G. S. 123, § 78.
P. S. 161, § 95.
130 Mass. 247.

SECTION 88. The property so appraised shall, if he requires it, be delivered to the debtor upon his depositing with the attaching officer the appraised value thereof in money, or upon giving bond to the officer in a sufficient sum, with two sufficient sureties, conditioned to pay to him the appraised value of the property or to satisfy all such judgments as may be recovered in the actions in which the property was attached, if demanded within the time during which the property would have been held by the respective attachments or within thirty days after the time when the creditors, respectively, would have been entitled to demand payment out of the proceeds of the property if it had been sold as before provided.

Bond to be
returned with
the writ.
1822, 93, § 4.
R. S. 90, § 63.
G. S. 123, § 79.
P. S. 161, § 96.

SECTION 89. The officer who takes such bond shall return it with the writ on which the first attachment is made in like manner as bail bonds are returned, with a certificate of his doings therein; and if the bond is forfeited, any of the attaching creditors may bring an action of contract thereon in the name of the officer.

1 SECTION 90. The writ in an action on such bond shall, in addition
 2 to the usual indorsement, have the names of the creditors by whom
 3 the action is brought indorsed upon it; and if judgment is rendered
 4 for the defendants, executions for the costs shall be issued against
 5 all the creditors whose names are so indorsed.

Action on
bond by cred-
itors.
1822, 93, § 4.
R. S. 90, § 64.
G. S. 123, § 80.
P. S. 161, § 97.

1 SECTION 91. If judgment is rendered for the plaintiff, the money
 2 recovered shall be first applied, under the order of the court, to pay
 3 the reasonable expenses of prosecuting the action, so far as they are
 4 not reimbursed by the costs recovered of the defendant; and the
 5 residue shall belong to all the attaching creditors according to their
 6 respective rights.

Money recov-
ered to belong
to them.
R. S. 90, § 65.
G. S. 123, § 81.
P. S. 161, § 98.

1 SECTION 92. The court may, upon a hearing in equity, determine
 2 the rights of the several attaching creditors and award a separate
 3 execution for the amount due or payable to each, to be served and
 4 levied to his own use in the manner provided when a judgment is
 5 rendered on an administration bond: or it may award one exe-
 6 cution for the whole amount due on the bond and cause the money
 7 received to be distributed among the creditors according to their
 8 respective rights.

Distribution
by court.
R. S. 90, § 66.
G. S. 123, § 82.
P. S. 161, § 99.

1 SECTION 93. No judgment or execution shall be awarded for
 2 the use of a creditor without reserving as much as may be due upon
 3 any prior attachment, whether the creditor in such prior action is
 4 or is not one of those by whom the action is brought on the bond.

Prior attach-
ments to be
protected.
R. S. 90, § 67.
G. S. 123, § 83.
P. S. 161, § 100.

1 SECTION 94. A creditor who is entitled to the benefit of the
 2 bond, and who has not joined in bringing the action thereon may
 3 bring a writ of scire facias upon the judgment and recover any
 4 amount due to him upon the bond: or he may, upon motion at any
 5 time before final judgment, become a party to the action upon
 6 terms.

Creditor not
joining in
action on the
bond, &c.
R. S. 90, § 68.
G. S. 123, § 84.
P. S. 161, § 101.

1 SECTION 95. No creditor whose cause of action on such bond
 2 accrued more than one year before the commencement of the action
 3 shall have judgment or execution in such action, and no creditor
 4 shall sue out a writ of scire facias upon the judgment, unless within
 5 one year after his cause of action accrues.

Limitation.
R. S. 90, § 69.
G. S. 123, § 85.
P. S. 161, § 102.

1 SECTION 96. If property which has been sold or appraised and
 2 delivered to the debtor in the manner before provided is attached
 3 by several creditors, any one of them may demand and receive
 4 satisfaction of his judgment, notwithstanding a prior attachment, if
 5 he is otherwise entitled to demand the money, and if a sufficient
 6 amount of the proceeds of the property, or of its appraised value,
 7 remains to satisfy all prior attachments.

Creditor may
be paid, when.
R. S. 90, § 70.
G. S. 123, § 86.
P. S. 161, § 103.

ATTACHMENT OF SHARE OF JOINT OWNER OF PERSONALTY.

1 SECTION 97. If personal property of two or more part owners
 2 is attached in an action against one or more of them, it shall, upon
 3 the request of any other part owner, be examined and appraised in
 4 the manner provided in sections eighty-three to eighty-seven, inclu-

Appraisal
at request of
part owner.
1835, 143, § 1.
R. S. 90, § 73.
G. S. 123, § 87.

P. S. 161, § 105.
2 Met. 36.
129 Mass. 127.

sive, except that the part owner who makes the application shall, 5
and the debtor shall not, appoint one of the appraisers. The pro- 6
visions of this section shall not apply to partnership property. 7

Delivery to
part owner.
R. S. 143, §§ 2, 3.
R. S. 90, §§ 74,
77.
G. S. 123, §§ 88,
91.
P. S. 161, §§ 106,
109.
108 Mass. 565.

SECTION 98. The property so appraised shall be delivered to 1
the part owner at whose request it was appraised, upon his giving 2
bond to the attaching officer in a sufficient sum, with two sufficient 3
sureties, conditioned to restore such property in like good order 4
or to pay to the officer the appraised value of the defendant's share or 5
interest therein, or to satisfy all such judgments as may be recovered 6
in the action in which it is attached, if demanded within the time 7
during which the property would have been held by the respective 8
attachments. The provisions of section eighty-nine and of suc- 9
ceeding sections shall apply to such bond and to an action thereon. 10

Pledgee of
property.
R. S. 143, § 2.
R. S. 90, § 75.
G. S. 123, § 89.
P. S. 161, § 107.

SECTION 99. If such appraised value or any part thereof is so 1
paid, the defendant's share of the property shall thereby become 2
pledged to the party to whom it was delivered, and he may sell it, 3
if not redeemed, and shall account to the defendant for the balance 4
of the proceeds of the sale. 5

Restoration.
R. S. 90, § 76.
G. S. 123, § 90.
P. S. 161, § 108.

SECTION 100. If the attachment is dissolved, the party to whom 1
the defendant's share was delivered shall restore it to the defendant, 2
or to the officer, to be by him delivered to the defendant. 3

FRAUDULENT ATTACHMENTS.

Fraudulent
attachments,
how defeated.
R. S. 142, §§ 1, 2.
R. S. 154.
R. S. 90, §§ 83,
84.
G. S. 123, §§ 92,
93.
P. S. 161, §§ 110,
111.
19 Pick. 381.
9 Met. 69.

SECTION 101. A person who claims title or interest in any real 1
or personal property which has been attached in an action between 2
other persons by an attachment, purchase, mortgage or other title 3
subsequent to the attachment may dispute the validity and effect 4
of such prior attachment on the ground that the amount demanded 5
in the first action was not justly due or was not payable when the 6
action was commenced by filing a petition in the court in which the 7
first action is pending, at any time before final judgment therein, 8
stating the facts and circumstances on which his petition is founded, 9
and the grounds of his own claim, and praying that the prior attach- 10
ment may be dissolved. 11

Affidavit and
bond.
R. S. 142, § 3.
R. S. 90, §§ 85,
91.
G. S. 123, §§ 94,
99.
P. S. 161, §§ 112,
117.

SECTION 102. The petitioner, or a person in his behalf, shall 1
make oath that his claim is just and legal and that all the other 2
facts stated in the petition are true or are believed by the de- 3
ponent to be true: and, upon filing the petition, the petitioner, or 4
a person in his behalf, shall give a bond or recognizance with suf- 5
ficient surety or sureties, conditioned to pay to the adverse party 6
such damages and costs as may be awarded to him in the proceed- 7
ings upon the petition. 8

Dissolution of
prior attach-
ment.
R. S. 90, § 86.
G. S. 123, § 95.
P. S. 161, § 113.
1900, 447, § 1.
5 Pick. 410.
8 Pick. 165.
12 Pick. 199.

SECTION 103. If the court finds that a part of the amount de- 1
manded in the prior action is not justly due, or was not payable 2
when the action was commenced, it shall order the attachment 3
therein made to be dissolved in whole or in part as justice re- 4
quires; but such order shall have no other effect on the prior ac- 5
tion. If the hearing is in the supreme judicial court or the superior 6

7 court, the court shall, upon motion, order a trial by jury of any
8 question of fact.

1 SECTION 104. The proceedings between the adverse claimants
2 or plaintiffs shall not be affected by any answer, plea or other act of
3 the defendant in the prior action nor by the judgment rendered
4 therein.

Effect of
pleadings.
R. S. 90, § 88.
G. S. 123, § 96.
P. S. 161, § 114.

1 SECTION 105. No attachment shall be dissolved as aforesaid by
2 reason of a defence to the action which is founded on the laws for
3 the limitation of actions or which requires certain contracts to be
4 made in writing, or by reason of any other like defence, if the
5 court finds that the demand is otherwise well founded and is justly
6 and equitably due.

Defences in
such case.
R. S. 90, § 89.
G. S. 123, § 97.
P. S. 161, § 115.

1 SECTION 106. The court may, upon such inquiry, award to
2 either party reasonable costs and, if the prior attachment is main-
3 tained, may award to the attaching creditor reasonable damages.

Damages and
costs.
1823, 142, § 4.
R. S. 90, § 90.

G. S. 123, § 98.

P. S. 161, § 116.

2 Met. 229.

1 SECTION 107. If, during the pendency of the proceedings, the
2 action in which the attachment was made is transferred to another
3 court, the inquiry concerning the attachment shall be transferred to
4 the same court and be there heard and determined.

Proceedings
upon appeal.
R. S. 90, § 92.
G. S. 123, § 100.
P. S. 161, § 118.

1 SECTION 108. The judgment of the court upon such an inquiry,
2 whether the attachment is thereby vacated or held to be valid and
3 effectual, shall be a bar to any action which may be brought by the
4 petitioner against the party who made the attachment for any
5 supposed fraud or deceit therein.

Effect of
judgment.
R. S. 90, § 93.
G. S. 123, § 101.
P. S. 161, § 119.

1 SECTION 109. The provisions of the eight preceding sections
2 shall not apply to an action commenced before a trial justice.

To what cases
applied.
R. S. 90, § 94.
G. S. 123, § 102.

1874, 152.

P. S. 161, § 120.

1900, 447, § 2.

6 Gray, 528.

REDUCTION OR DISCHARGE OF ATTACHMENT.

1 SECTION 110. If an excessive or unreasonable attachment is
2 made on mesne process, the defendant may apply in writing, in
3 any county, to a justice of the court to which such process is
4 returnable, for a reduction of the amount of the attachment or for
5 its discharge: and such justice shall order a notice to the plaintiff,
6 which shall be returnable before himself or any other justice of the
7 same court as speedily as circumstances permit. If, upon a sum-
8 mary hearing of the parties, it is found that the attachment is
9 excessive or unreasonable, the justice shall reduce or dissolve the
10 attachment or order a part of the goods or estate to be released.

Reduction of
attachment.
1851, 233, § 96.
1852, 312, § 59.
G. S. 123, § 103.
P. S. 161, § 121.
1897, 460.

DISSOLUTION OF ATTACHMENT.

By Operation of Law.

1 SECTION 111. If the final judgment is for the defendant, the
2 attachment, except as provided in section fifty-six, shall be forth-
3 with dissolved.

Dissolution of
attachment by
judgment.
R. S. 90, § 26.

G. S. 123, § 43.

P. S. 161, § 54.

Dissolution of attachment by death of defendant. 1822, 93, § 6. R. S. 90, §§ 105, 106. G. S. 123, §§ 45, 46. P. S. 161, §§ 56, 57. 5 Met. 356. 11 Cush. 463. 6 Gray, 114, 523.

SECTION 112. An attachment of real or personal property shall be dissolved if the debtor dies before it is taken or seized on execution and administration of his estate is granted in this commonwealth upon an application therefor made within one year after his decease. The attaching officer shall also, upon demand, and upon receiving from the executor or administrator of such debtor so appointed his legal fees and charges for attaching and keeping the property attached by him, deliver it to such executor or administrator.

Liability of officer for net proceeds. R. S. 90, § 107. G. S. 123, § 47. P. S. 161, § 58.

SECTION 113. If the officer has, before such demand, sold on execution the personal property attached or a right of redeeming land attached as aforesaid, he shall not be a trespasser, but shall be liable only for the proceeds of the sale after deducting his legal fees and charges for attaching, keeping and selling the property attached. Such proceeds may be recovered by the executor or administrator in an action of contract.

— of creditor for proceeds paid over to him. R. S. 90, § 108. G. S. 123, § 48. P. S. 161, § 59.

SECTION 114. If the officer in such case has, before such demand, paid over the proceeds of the sale to the judgment creditor, he shall not be liable therefor, but the executor or administrator, if appointed as before provided, may in an action of contract recover from the judgment creditor the amount so paid to him.

Set-off not allowed in such case. R. S. 90, § 109. G. S. 123, § 49. P. S. 161, § 60.

SECTION 115. The defendant, in an action founded on either of the three preceding sections, shall not be allowed in any manner to set off a demand against the executor or administrator, or against the estate of the deceased.

By Giving Bond.

Attachments dissolved by giving bond. 1838, 163, § 20. 1850, 27, § 1. 1851, 327, § 18. G. S. 123, § 104. 1875, 68, § 2. 1881, 100. P. S. 161, § 122. 1888, 405, § 2. 6 Gray, 112. 104 Gray, 333. 104 Mass. 356. 106 Mass. 455. 109 Mass. 576. 111 Mass. 213. 114 Mass. 101. 115 Mass. 27, 42. 117 Mass. 288, 343. 121 Mass. 516. 122 Mass. 176. 123 Mass. 303. 130 Mass. 16. 133 Mass. 461. 141 Mass. 154. 156 Mass. 166. 164 Mass. 816. 167 Mass. 222.

SECTION 116. A defendant whose property has been attached on mesne process in a civil action may, at any time before final judgment, dissolve the attachment by giving a bond with sufficient sureties, who shall be approved by the plaintiff or by his attorney in writing, by a master in chancery or by a justice of a court of record if the attachment is made within the jurisdiction of such justice, conditioned to pay to the plaintiff, within thirty days after the final judgment in such action, such amount, if any, as he may recover; and also to pay to the plaintiff, within thirty days after the entry of any special judgment in accordance with the provisions of chapter one hundred and seventy-seven, the amount, if any, for which such special judgment shall be entered. Sureties shall not be sufficient unless they are satisfactory to the plaintiff, or unless the magistrate finds that each, if there are only two, is worth, in excess of his indebtedness, an amount equal to that for which the attachment is laid; or, if there are more than two, that they are together worth twice such amount.

Hearing before approval of bond. 1846, 122. 1850, 27, § 1. G. S. 123, § 105. 1881, 100.

SECTION 117. Before such bond is approved, the defendant, or a person in his behalf, shall make application in writing to the magistrate, specifying therein the names and residences of the proposed sureties. Notice of the time and place of the hearing shall

5 be given to the plaintiff or his attorney as provided in sections
 6 twenty-seven to thirty, inclusive, of chapter one hundred and sev-
 7 enty-five; but the plaintiff or his attorney may in writing waive
 8 such notice or may approve the bond at any time.

P. S. 161, § 123.
 120 Mass. 368.

1 SECTION 118. The fees of the magistrate shall be one dollar
 2 for the hearing and decision and fifty cents for the citation. If
 3 the attachment is dissolved and the defendant prevails, such fees
 4 shall be taxed in his costs.

Fees for ap-
 proving bonds.
 1850, 27, § 2.
 1867, 137, § 2.
 G. S. 123, § 106.
 1881, 100.
 P. S. 161, § 124.

1 SECTION 119. Such bond and the bond required by the provi-
 2 sions of section one hundred and twenty-three shall be filed by
 3 the defendant with the clerk of the court to which the writ is re-
 4 turnable, or in which the action is pending, within ten days after
 5 its approval, and the attachment shall not be dissolved until the
 6 bond shall have been so filed. The plaintiff may take such bonds
 7 from the files upon leaving on file a copy thereof attested by the
 8 clerk; and the plaintiff may tax the cost of such copy as part of
 9 his costs in an action on such bond.

Bond to be filed
 by defendant.
 1870, 291, § 5.
 1881, 100.
 P. S. 161, § 125.
 122 Mass. 6.
 141 Mass. 154.

1 SECTION 120. If, within four months after an attachment of
 2 property has been made on mesne process in a civil action founded
 3 on a claim which would, if proved, be barred by a discharge in
 4 insolvency of the defendant and after such attachment has been dis-
 5 solved as provided in the four preceding sections, proceedings in
 6 insolvency are instituted by or against the defendant, the action shall,
 7 upon the suggestion of any party interested, be continued to await
 8 the result of such proceedings in insolvency; and if the debtor re-
 9 ceives his discharge in insolvency, the sureties on the bond given
 10 by him to dissolve the attachment shall be released from all liability
 11 thereon.

Release of
 sureties of in-
 solvent debtor.
 1889, 470.
 170 Mass. 179.

1 SECTION 121. A defendant may, at any time before final judg-
 2 ment, release from attachment the property attached, or such part
 3 thereof as he may elect, by giving bond to the plaintiff with sufficient
 4 sureties, who shall be approved by the plaintiff or by his attorney
 5 in writing, by a master in chancery or by a justice of a court of
 6 record if the attachment is made within the jurisdiction of such
 7 justice, conditioned to pay to the plaintiff within thirty days after
 8 final judgment in such action, or after the entry of a special judg-
 9 ment therein under the provisions of chapter one hundred and
 10 seventy-seven the amount fixed as the value of the property so re-
 11 leased, or so much of said amount as may be necessary to satisfy
 12 the amount, if any, which the plaintiff may recover; and the prop-
 13 erty so released shall be described in such bond. If the parties to
 14 the action do not agree upon the value of the property, the de-
 15 fendant, or a person in his behalf, may make written application to
 16 any magistrate who is authorized to approve said bond in the county
 17 in which the property is situated, stating the names of the parties
 18 to the action, the name of the officer who made the attachment, a
 19 description of the property which he desires to release from attach-
 20 ment and the names and residences of the proposed sureties. The
 21 magistrate shall forthwith cause written notice of the application
 22 and of the time and place for the hearing to be served upon the

Bond to pay
 value of prop-
 erty.
 1867, 137.
 1870, 291, § 2.
 1875, 68, § 2.
 1881, 100.
 P. S. 161, § 126.
 1888, 405, § 2.
 120 Mass. 358.
 122 Mass. 6.
 169 Mass. 61.

plaintiff, if he resides in the county; otherwise, upon the officer 23
 who made the attachment. The notice shall be served twenty-four 24
 hours, at least, before the time appointed therein for a hearing and 25
 as much earlier as the magistrate may order. At the time and 26
 place appointed, after hearing the parties, the magistrate shall ap- 27
 point three disinterested persons to examine and appraise the prop- 28
 erty described in the application, who shall be sworn, shall appraise 29
 the property at its fair market value and shall make return of their 30
 doings in writing to the magistrate at a time and place fixed by him 31
 to which the hearing shall be adjourned. At such adjourned hear- 32
 ing the defendant may give bond to the plaintiff, with sureties, 33
 who shall be approved by the magistrate as herein provided. Upon 34
 the filing of such bond, as is required by the provisions of section 35
 one hundred and nineteen, the attachment upon the property de- 36
 scribed therein shall be dissolved. 37

Fees.
 1870, 291, § 4.
 1881, 100.
 P. S. 161, § 127.

SECTION 122. The magistrate may adjourn such hearing from 1
 time to time. His fees shall be one dollar for each citation and 2
 two dollars for each hearing and each adjournment thereof. The 3
 fees of the appraisers shall be determined by the magistrate. The 4
 applicant shall pay all fees; but if final judgment is in his favor, 5
 they shall be taxed as a part of his costs. The magistrate's certifi- 6
 cate of the amount shall be filed before said fees are allowed as a 7
 part of the taxable costs. 8

Dissolution of
 attachment of
 realty fraudu-
 lently con-
 veyed.
 1867, 137.
 1870, 291, § 3.
 1875, 68, § 2.
 1881, 100.
 P. S. 161, § 128.
 1888, 405, § 2.
 120 Mass. 358.

SECTION 123. If an attachment of real property is made under 1
 the provisions of sections sixty-three and sixty-four, the person in 2
 whose name the record title of the property attached stands, or a per- 3
 son in his behalf, may, before final judgment, dissolve the attachment 4
 by giving bond to the plaintiff, with sufficient sureties, conditioned 5
 to pay to him, if he establishes his title to the land in a writ of 6
 entry against the person having the record title thereto at the time 7
 of the attachment, the ascertained value of the land, or so much 8
 thereof as shall satisfy the amount, if any, which the plaintiff shall 9
 recover upon final judgment, or upon a special judgment under the 10
 provisions of chapter one hundred and seventy-seven, in the action 11
 in which such attachment was made. All proceedings required in 12
 the two preceding sections shall apply to the dissolution of an at- 13
 tachment under the provisions of this section. In the trial of such 14
 writ of entry, the record of the attachment and of final or special 15
 judgment, as the case may be, in the action in which the attach- 16
 ment was made shall be conclusive evidence of a momentary seisin 17
 of the land in the plaintiff to enable him to maintain an action 18
 therefor upon his own seisin; but no such writ of entry shall be 19
 brought after the expiration of one year from the date of such final 20
 or special judgment. If the demandant recovers judgment on such 21
 writ of entry, he shall not have an execution for possession, but 22
 may have an execution for costs. 23

—by deposit.
 1897, 404.

SECTION 124. A defendant may dissolve an attachment by 1
 depositing with the officer who makes the attachment an amount of 2
 money equal at least to the amount of the *ad damnum* in the writ, 3
 which the officer shall hold in place of the property attached and 4
 which shall be subject to be disposed of in the same manner. 5

1 SECTION 125. A defendant whose individual property has been
 2 attached in an action against several defendants may dissolve such
 3 attachment, or any part thereof, in any of the modes provided in
 4 the nine preceding sections. But the bond to dissolve such attach-
 5 ment shall be so conditioned as to apply only to a judgment re-
 6 covered against such defendant alone or jointly.

Dissolution
of individual
property of
one defendant.
1871, 114.
1881, 100.
P. S. 161, § 129.
164 Mass. 316.

By Appointment of Receiver.

1 SECTION 126. An attachment of property on mesne process shall
 2 be dissolved by the appointment by any court of competent juris-
 3 diction in this commonwealth of a receiver to take possession of
 4 such property, if the bill or petition praying for the appointment
 5 of such receiver is filed in said court within four months after such
 6 attachment was made, unless the court at any time, in its discretion,
 7 continues such attachment for the benefit of the estate of the de-
 8 fendant. In such case, the court may authorize the receiver to
 9 prosecute the action upon which the attachment was made for the
 10 benefit of the estate of the defendant and may make further orders
 11 to enable the receiver to recover for the benefit of the estate of the
 12 defendant the amount due to the plaintiff in the original action.

— of attach-
ment by
appointment
of receiver.
1898, 420, § 1.

1 SECTION 127. If an attachment has been dissolved in the man-
 2 ner provided in the preceding section, the proceedings for the
 3 appointment of a receiver shall not thereafter be dismissed and the
 4 receiver discharged until all the assets which have come into his
 5 hands as receiver have been fully distributed or the claim upon
 6 which the attachment was made has been fully paid and discharged,
 7 unless the debtor, before such dismissal, deposits with the officer
 8 who made the attachment such amount of money as the court be-
 9 fore which such receivership proceedings are pending, after notice
 10 to the attaching creditor and a hearing, finds reasonable for the
 11 protection of his claim in the action in which the attachment was
 12 made. Such money shall be held by the officer in place of the
 13 property held under the attachment before its dissolution and shall
 14 be disposed of as such property would have been disposed of had
 15 the attachment not been dissolved.

Discharge of
receiver.
1898, 420, § 2.

EXECUTION OF BONDS.

1 SECTION 128. A bond which is required to be given by a party
 2 to a civil action or proceeding may be executed by any person other
 3 than the party to the action or proceeding, and may be approved in
 4 the same manner as if executed by such party, if it appears to
 5 the magistrate who approves it that there is good reason why it is
 6 not executed by him.

Execution of
bonds.
1868, 285.
1869, 436.
P. S. 161, § 104.
156 Mass. 359.
165 Mass. 415.

CHAPTER 168.

OF ARREST ON CIVIL PROCESS.

SECTIONS 1-28. — Arrest on Mesne Process and Execution.

SECTIONS 29-46. — Discharge from Arrest.

SECTIONS 47-51. — Imprisonment.

SECTIONS 52-55. — Fraudulent Debtors.

SECTIONS 56-58. — Discharge of Debtors of the Commonwealth.

SECTION 59. — Discharge or Removal of Insane Debtors.

SECTIONS 60-64. — Judgment Debtors Imprisoned or on Bail.

SECTION 65. — Surrender of Principal on Recognizance.

SECTIONS 66, 67. — Remedy on Recognizances and Bonds, and for Escapes.

SECTIONS 68-73. — Provisions relative to Magistrates.

SECTIONS 74-79. — Fees and Costs.

SECTIONS 80-86. — Equitable Process after Judgment.

ARREST ON MESNE PROCESS AND EXECUTION.

Arrest on mesne process in actions of contract.

1830, 131, § 1.

1834, 167, § 1.

R. S. 90, § 111;

97, § 44.

1855, 444, § 11.

1857, 141, § 17.

G. S. 124, § 1.

P. S. 162, § 1.

13 Gray, 575.

2 Allen, 431.

122 Mass. 428.

127 Mass. 60.

139 Mass. 458,

461.

167 Mass. 31.

SECTION 1. No person shall be arrested on mesne process in an action of contract, unless the plaintiff or a person in his behalf makes affidavit and proves to the satisfaction of a justice of a police, district or municipal court, a master in chancery, a trial justice, or, except in the county of Suffolk, a justice of the peace :

First, That he has a good cause of action and reasonable expectation of recovering a sum amounting to twenty dollars exclusive of costs which have accrued in any former action ;

Second, That he believes and has reason to believe that the defendant has property, not exempt from being taken on execution, which he does not intend to apply to the payment of the plaintiff's claim ; and,

Third, That he believes and has reason to believe that the defendant intends to leave the commonwealth, so that execution, if obtained, cannot be served upon him ;

Or, instead of the second and third, that the defendant is an attorney at law, or a person, member of a firm, agency or association engaged in the business of collecting money, that the debt sought to be recovered is for money collected by the defendant for the plaintiff and that the defendant unreasonably neglects to pay the same to the plaintiff.

Such affidavit and the certificate of the magistrate that he is satisfied it is true shall be annexed to the writ.

— in actions of tort.

1854, 63.

1855, 249, § 1.

G. S. 124, § 2.

1873, 352, § 2.

P. S. 162, § 2.

7 Gray, 59.

8 Allen, 434.

SECTION 2. A person shall not be arrested on mesne process in an action of tort unless the plaintiff or a person in his behalf makes oath to the satisfaction of a magistrate named in the preceding section that he believes and has reason to believe that he has a good cause of action against the defendant, that he has reasonable expectation of recovering an amount equal, at least, to one-third of the damages claimed in the writ, and that he believes and has reason to believe that the defendant intends to leave the commonwealth, so that execution, if obtained, cannot be served upon him ; and such

10 affidavit, with a certificate of the magistrate that he is satisfied it is
11 true, shall be annexed to the writ.

1 SECTION 3. No woman shall be arrested on mesne process except
2 for tort. No person shall be arrested on mesne process in a civil
3 action for slander or libel.

Arrest on
mesne process
of women, etc.
1830, 131, § 2.
R. S. 97, § 46.

1855, 249, § 2;
444, § 15.

1857, 141, § 30.
G. S. 124, §§ 3, 7.

P. S. 162, § 3.
10 Allen, 76.

1 SECTION 4. A person arrested on mesne process may in any
2 county apply in writing to a justice of the court to which such
3 process is returnable for a reduction of the amount of the ad dam-
4 num of the writ or for his discharge; and such justice shall order
5 notice to the plaintiff, returnable before himself or another justice
6 of the same court. If, upon a hearing, it is found that the ad dam-
7 num is excessive, the justice shall reduce it or, if the arrest is found
8 to be unreasonable, he may in his discretion order the discharge of
9 the defendant.

Reduction of
ad damnum.
1898, 397.

1 SECTION 5. The officer serving an original writ shall not be liable
2 for not having arrested the defendant, unless he has been expressly
3 required by the plaintiff or his attorney to make such arrest.

Duty of officer.
R. S. 90, § 110.
G. S. 124, § 4.
P. S. 162, § 4.

1 SECTION 6. The judgment creditor in an execution issued against
2 a woman upon a judgment for twenty dollars or more, exclusive of
3 costs which make a part of said judgment, whether the same have
4 accrued in the last action or in a former action on the same original
5 cause of action, and while so much as that amount remains uncol-
6 lected, may cause payment thereof to be demanded of her by an
7 officer qualified to serve such execution; and if upon such demand
8 she fails to pay it or to expose sufficient property to be taken by
9 such officer to satisfy it, the officer shall, upon request of the judg-
10 ment creditor, make a return of his doings upon such execution and
11 shall be entitled to receive his fees for travel and, in addition thereto,
12 one dollar, which fees shall be repaid by the judgment debtor as a
13 part of the costs of the execution.

Demand on
female judg-
ment debtor.
1862, 162, § 1.
P. S. 162, § 6.
151 Mass. 363.

1 SECTION 7. After such demand the judgment creditor or a person
2 in his behalf may, in the county in which the judgment was ren-
3 dered or in which the debtor resides, file in a police, district or
4 municipal court or with a trial justice a petition under oath, with
5 a copy of the execution and the return of the officer thereon, stat-
6 ing the fact of such judgment and demand and alleging that he
7 believes that she has property, not exempt from attachment, which
8 she refuses to apply in payment of said execution, or to expose so
9 that it may be taken thereon, and asking that a citation may issue,
10 requiring her to appear at a time and place therein named and
11 submit to an examination relative to her property; and thereupon
12 the clerk of said court or the magistrate shall issue such citation,
13 allowing her at least one day for every twenty miles' travel, and
14 one day for any distance less than twenty miles. Such citation may
15 be served by an officer qualified to serve the execution, and his fees
16 for such service shall be fifty cents for the copy, and for travel, the
17 same as for the service of writs.

Citation, upon
failure to sat-
isfy execution.
1862, 162, § 2.
P. S. 162, § 7.
1897, 466, § 1.

Capias.
1862, 162, § 3.
P. S. 162, § 8.

SECTION 8. If the debtor fails to appear at the time and place named in the citation, upon proof of service by the return of the officer, the magistrate may issue a capias to bring her before him, which may be served by an officer qualified to serve the citation.

Examination.
1862, 162, § 4.
P. S. 162, § 9.

SECTION 9. The judgment debtor, when so brought before said magistrate, shall be sworn to make true, full and perfect answers relative to her property and the disposal thereof; and she shall thereupon be examined by the judgment creditor upon written interrogatories, in the presence of the magistrate or otherwise as he shall order; and after such examination she may add such other facts as she may consider necessary, and the judgment creditor may re-examine her relative thereto. Such examination shall be signed by her and filed with said magistrate. Either party may introduce evidence relative to the subject of such examination.

Surrender of
property.
Commitment
for contempt.
1862, 162, § 5.
P. S. 162, § 10.

SECTION 10. If it appears upon such examination that the judgment debtor has property of the value of twenty dollars not exempt from attachment or from being taken on execution or which cannot be reached on execution, judgment to that effect shall be entered and she shall produce such property, or so much thereof as may be needed to satisfy such execution with the costs of the proceedings upon such citation; or if said property is not within the county in which the proceedings are had, or not capable of being taken on execution, she shall execute and deliver to the judgment creditor or to a person in his behalf a transfer, assignment or conveyance thereof, or of so much thereof as may be sufficient to satisfy said execution and said costs, or to secure the payment thereof. If, upon being ordered so to do, she fails to comply with such order, she shall be committed by said magistrate as for a contempt, until she complies with such order or is otherwise discharged according to law.

Effect of insol-
vency, etc.
1862, 162, § 6.
P. S. 162, § 11.

SECTION 11. If such judgment debtor during such commitment becomes an insolvent debtor under the laws of this commonwealth or a bankrupt under the laws of the United States, or if it appears that she has been divested of her property during such commitment otherwise than by her own act, she shall be discharged.

Property
fraudulently
conveyed by
her.
1862, 162, § 7.
P. S. 162, § 12.

SECTION 12. If, after the commencement of the action upon which the judgment was obtained, the judgment debtor makes a voluntary or fraudulent conveyance, transfer or gift of any property, she may be required to transfer it to the judgment creditor, who may thereupon demand such property and recover it from the person who received it, or from any person who may have taken it without consideration or with notice of the fraud or want of consideration of the original transfer, conveyance or gift.

Contempt by
fraudulent
transfer.
1862, 162, § 8.
P. S. 162, § 13.

SECTION 13. If, after the service of the citation upon the judgment debtor and during the pendency of the proceedings thereon, she makes a conveyance, assignment or transfer of property or a payment of money with intent to prevent it from being transferred or paid to the judgment creditor or applied by said proceedings to the satisfaction of said judgment, she may, in the discretion of the

7 magistrate, be committed as for a contempt; but the provisions of
8 this section shall not apply to the payment by the debtor of a debt
9 for necessities, of a debt due on an execution upon which she pre-
10 viously has been cited to appear under the provisions of this chapter,
11 nor of a reasonable fee of counsel relating to the examination.

1 SECTION 14. Upon petition for a citation under the provisions
2 of section seven, the petitioner shall pay to the clerk of said courts
3 or to said trial justice three dollars, which shall be in payment for
4 issuing the required citations, notices, orders and certificates and for
5 the examinations and hearings in such proceedings. Such fee shall
6 be repaid by the judgment debtor, if she is adjudged to have prop-
7 erty under the provisions of section ten.

Fees.
1862, 162, § 9.
P. S. 162, § 14.
1897, 466, § 2.

1 SECTION 15. After the expiration of three years from the ter-
2 mination of such proceedings and while the judgment remains in
3 force, the judgment creditor may cause a new demand to be made
4 upon the execution; and if it is not thereupon satisfied, he may
5 cause like proceedings to be commenced anew.

Second exam-
ination, when.
1862, 162, § 10.
P. S. 162, § 15.

1 SECTION 16. A judgment in favor of the commonwealth against
2 a male or female defendant may, if the attorney general or the
3 district attorney for the district in which such judgment was re-
4 covered so orders in writing upon the execution, be enforced in
5 accordance with the provisions of the ten preceding sections; and
6 the petition referred to in section seven may in such case be
7 made to a court or magistrate named therein, or to the court in
8 which the judgment was rendered, which court shall in such case
9 have the same jurisdiction as is given in said sections to the courts
10 and magistrate therein named and may designate a master in chan-
11 cery to examine the judgment debtor and report the testimony.

Judgments in
favor of the
common-
wealth, how
enforced.
1875, 179.
P. S. 162, § 16.
1897, 466, § 1.

1 SECTION 17. Except as provided in the eleven preceding sec-
2 tions and section twenty-six and except in actions of tort, no per-
3 son shall be arrested on an execution in a civil action, unless the
4 judgment creditor or a person in his behalf, after execution has
5 been issued amounting to twenty dollars exclusive of costs which
6 make part of said judgment, whether the same have accrued in the
7 last action or in any former action on the same original cause of
8 action, and while so much as that amount remains uncollected,
9 makes affidavit and proves to the satisfaction of a police, district or
10 municipal court or a trial justice that he believes and has good reason
11 to believe:

Arrest on
execution.
1810, 114.
1816, 111.
1830, 131, § 1.
R. S. 97, § 44.
1855, 443, §§ 1-3.
1857, 141, §§ 1-3.
G. S. 124, § 5.
1860, 215, § 1.
P. S. 162, § 17.
1888, 419, § 1.
1891, 407.
3 Gray, 496.
13 Gray, 575.
98 Mass. 530.
99 Mass. 36.
117 Mass. 1.

137 Mass. 467.

139 Mass. 458, 461.

146 Mass. 89.

162 Mass. 45, 339.

166 Mass. 226.

136 U. S. 468.

12 First, That the debtor has property, not exempt from being taken
13 on execution, which he does not intend to apply to the payment
14 of the plaintiff's claim; or,

4 Allen, 72.
106 Mass. 501.
127 Mass. 550.

15 Second, That, since the debt was contracted or the cause of
16 action accrued, the debtor has fraudulently conveyed, concealed or
17 otherwise disposed of a part of his property, with intent to secure it
18 to his own use or defraud his creditors; or,

19 Third, That, since the debt was contracted or the cause of
20 action accrued, the debtor has hazarded and paid money or other

151 Mass. 419.

property to the value of one hundred dollars or more in some kind 21
of gaming prohibited by the laws of this commonwealth; or, 22

Fourth, That, since the debt was contracted, the debtor has wil- 23
fully expended and misused his property or any part thereof to 24
enable himself to swear that he has not property to the amount of 25
twenty dollars, not exempt from being taken on execution; or, 26

124 Mass. 92.
138 Mass. 384.
146 Mass. 439.

Fifth, If the action was founded on contract, that the debtor 27
contracted the debt with intent not to pay it; or, 28

1859, 166, § 2.
1901, 343.

Sixth, That the debtor is an attorney at law or a person, member 29
of a firm, agency or association engaged in the business of collect- 30
ing money; that the debt upon which the judgment on which the 31
execution issued was recovered was for money collected by the 32
debtor for the creditor, and that said debtor unreasonably neglects 33
to pay it. 34

1881, 263, § 3.
1891, 407.
104 Mass. 354.
115 Mass. 236.
144 Mass. 151.
149 Mass. 96.
153 Mass. 541.

Such affidavit, and the certificate of the magistrate that he is satis- 35
fied there is reasonable cause to believe that the charges therein con- 36
tained, or one of them, are true, shall be annexed to the execution. 37
If a debtor is entitled to notice under the provisions of the follow- 38
ing section, such affidavit may, unless the magistrate otherwise 39
orders, be made at any time before the certificate is issued. If 40
the judgment debtor lives or has his usual place of business in this 41
commonwealth, the application for a certificate authorizing his arrest 42
shall be made in the county in which he lives or has his usual place 43
of business; otherwise, in any county. 44

Notice of ap-
plication for
arrest, how
served.
1877, 250, §§ 1, 5.
1879, 283, § 2.
P. S. 162, §§ 18,
25.
1887, 442, §§ 1,
2, 4.
1888, 419, §§ 2, 4.
1889, 415, § 1.
129 Mass. 40.
134 Mass. 391,
473.
145 Mass. 221.
162 Mass. 17.
164 Mass. 150.
175 Mass. 451.

SECTION 18. A magistrate to whom application is made for a 1
certificate authorizing arrest on execution shall, unless the creditor 2
or a person in his behalf makes affidavit and proves to the satisfac- 3
tion of the magistrate that there is good reason to believe that the 4
debtor intends to leave the commonwealth, issue notice to the debtor 5
to appear before a magistrate named in the preceding section and 6
submit to an examination upon the charges specified in said section 7
or any of them. Such notice shall specify the charges on which 8
the creditor intends to examine the debtor, and may be served by 9
an officer qualified to serve civil process, by delivering an attested 10
copy of the notice to the debtor, or leaving it at his last and usual 11
place of abode, allowing not less than three days before the time 12
fixed for the examination, and at the rate of one hour additional 13
for each mile of travel. The examination, or the time fixed there- 14
for, may be postponed or continued from time to time at the dis- 15
cretion of the magistrate. 16

Form of notice
to debtor.
1877, 250, § 6.
P. S. 162, § 19.

SECTION 19. Such notice shall be substantially in the follow- 1
ing form: 2

To A. B.

C. D., the judgment creditor named in a certain execution against you, dated
, issued from [the court], having applied for a certificate authorizing
your arrest, you are hereby notified to appear before [the name or names of a
magistrate or magistrates named in section twenty-nine of chapter one hundred
and sixty-eight of the Revised Laws] at [the place of examination or hearing]
on the day of at o'clock in the noon for examination
upon the following charges, specified in section seventeen of chapter one hun-
dred and sixty-eight of the Revised Laws, to wit: [Here specify the charges on
which the debtor is to be examined.]

Date, signature and test as provided in section seventy-three.

1 SECTION 20. If the judgment debtor appears before the magis-
2 trate at the time and place named, he shall be examined on oath
3 upon the charges specified in said notice to him. Such examination
4 may be in the presence of the magistrate or otherwise as he shall
5 order, and when completed, if in writing, shall be signed and sworn
6 to by the debtor, and shall be preserved by the magistrate. The
7 examination and hearing shall be oral, unless one of the parties
8 requests that it be wholly or partially in writing, and either party
9 may introduce additional evidence. If the debtor fails to appear
10 at the examination or, if appearing, fails to comply with all law-
11 ful orders of the magistrate, or if the truth of one at least of
12 charges two to six, inclusive, specified in section seventeen, is
13 proved to the satisfaction of the magistrate, the arrest may be au-
14 thorized upon the original execution or upon an alias or other
15 successive execution issuing on the same judgment. If the time
16 for the return of the execution expires while the examination is
17 pending, the arrest may be authorized upon an alias or other suc-
18 cessive execution, in like manner and for the same reasons as upon
19 the original execution. If the time for the return of the execution
20 or of an alias or other successive execution, issuing on the same
21 judgment, expires after a certificate authorizing an arrest has been
22 affixed thereto, and before such arrest has been made thereon, a
23 copy of said original certificate, made and certified by the clerk of
24 the court or by the magistrate issuing such execution, shall be affixed
25 to any such alias or other successive execution, and such copy shall
26 have the same force and effect as the original certificate.

Examination.
1877, 250, § 2.
1879, 283, § 1.
1881, 263, § 2.
P. S. 162, § 20.
1887, 442, §§ 2, 4.
1889, 415, § 3.
1890, 128.
1897, 382.
136 U. S. 468.

1 SECTION 21. If at such examination it appears that, after service
2 of the notice and pending the proceedings thereon, the debtor has
3 made a payment of money or a conveyance, assignment or transfer
4 of property which is not exempt from being taken on execution,
5 with intent to prevent it from being transferred or paid to the
6 creditor, or applied by said proceedings to the satisfaction of the
7 execution, and the magistrate so certifies, the debtor may, in
8 the discretion of the magistrate, be committed as for a contempt.
9 The provisions of this section shall not apply to the payment by
10 the debtor of a debt for necessities, of a debt due on an execution
11 upon which he previously has been cited to appear under the pro-
12 visions of this chapter, nor of a reasonable fee of counsel relating to
13 the examination.

Fraudulent
transfers.
1888, 419, § 3.
1890, 128.
158 Mass. 220.

1 SECTION 22. If it appears that the debtor has property above
2 the amount of twenty dollars, not exempt from being taken on ex-
3 ecution, he shall, if possible, produce the excess and allow it to be
4 taken on the execution, or otherwise applied to the payment of the
5 judgment debt and of the costs of the proceedings. If said property
6 cannot be taken on the execution, the debtor shall be required to
7 execute and deliver to the judgment creditor, or to a person in his
8 behalf, a transfer, assignment or conveyance thereof, in such form
9 as the magistrate orders.

Property to be
produced by
debtor.
1877, 250, § 3.
1881, 263, § 1.
P. S. 162, § 21.

1 SECTION 23. The debtor may redeem real property so transferred
2 within one year and personal property within sixty days from the

Redemption of
property so
transferred.

1877, 250, § 3.
P. S. 162, § 22.

date of such transfer, assignment or conveyance, upon payment of
said debt and costs and of the necessary expense actually paid by
the creditor for the care or custody of such property. If such prop-
erty is not so redeemed, it shall be sold forthwith at public auction,
unless in the transfer or assignment thereof it was otherwise pro-
vided, and the proceeds, after deducting the expenses of such sale,
shall be applied to the payment of said debt and costs, and the
excess, if any, remaining after such payments, shall be paid to the
debtor; or the creditor may take said property at a valuation to
be fixed by the debtor in the transfer, assignment or conveyance
thereof and apply such amount in payment as aforesaid.

Refusal or ac-
ceptance by
creditor of
transfer.
1877, 250, § 3.
P. S. 162, § 23.

SECTION 24. The creditor may refuse to accept a transfer or
assignment, and his acceptance thereof shall not impair his right to
have his execution satisfied in whole or in part by a levy on other
property in the manner provided by law. If the execution, after
such transfer or assignment has been made and before the sale of
the property conveyed thereby, is satisfied in full by levy or other-
wise, the creditor shall forthwith re-convey said property to the
debtor.

Subsequent
application for
arrest.
1877, 250, § 4.
P. S. 162, § 24.
1887, 442, § 2.
127 Mass. 550.

SECTION 25. If the debtor appears as ordered by the magistrate
and complies with all lawful orders made by him, and if the truth of
one at least of charges two to six, inclusive, specified in section
seventeen is not proved, a certificate authorizing an arrest shall not
be granted, and the judgment creditor shall not, within three years
thereafter, make application for the arrest or examination of such
debtor upon the same charge and cause of action.

Affidavit not
required,
when.
G. S. 124, § 6.
1862, 163, § 2.
P. S. 162, § 5.
12 Allen, 71.
143 Mass. 187.

SECTION 26. An affidavit shall not be required to authorize arrest
upon an execution issued for costs only; nor upon an execution
issued upon scire facias or other suit upon a recognizance against
bail or sureties in a criminal case, if the debtor neglects upon de-
mand of the officer having such precept to deliver to him prop-
erty, not exempt from levy, sufficient to satisfy such execution. A
debtor so arrested shall be committed on the execution, unless he
requires the officer to take him before a magistrate named in section
twenty-nine.

Arrest after
sunset.
1855, 444, § 15.
1857, 141, § 30.
G. S. 124, § 8.

SECTION 27. An arrest shall not be made after sunset, in cases
in which a certificate of a magistrate is required, unless it is specially
authorized therein for cause.

P. S. 162, § 26.

104 Mass. 354.

129 Mass. 156.

134 Mass. 391.

Further arrest.
1896, 247.

SECTION 28. When a person is under arrest by a constable on
mesne process or on execution, he may be further arrested by a
sheriff or his deputy upon a writ or execution which such constable
may not be qualified to serve, and thereupon said constable shall
deliver such person to said officer, make return upon his writ or
execution of his doings thereon and deliver it to said officer, who
shall hold such person in arrest thereunder and complete the ser-
vice thereof.

DISCHARGE FROM ARREST.

1 SECTION 29. When arrested on mesne process, the defendant shall
 2 be allowed a reasonable time to procure bail, and when arrested on
 3 such process, or on execution, he shall be allowed reasonable time to
 4 procure sureties for his recognizance hereinafter mentioned. When
 5 arrested on mesne process, if he does not give bail, and when ar-
 6 rested on execution in any case, he shall be taken before a police,
 7 district or municipal court, or a trial justice, or if he wishes to
 8 recognize, he may be taken before a master in chancery. If the
 9 arrest is made when the court is not sitting and the defendant or
 10 debtor does not desire to give bail or to recognize, the officer
 11 making the arrest may deliver the defendant or debtor to the keeper
 12 of the jail, to be detained in said jail until the next sitting of the
 13 court for the transaction of business, when he shall be delivered
 14 to said officer to be taken before the court. The officer making
 15 the arrest shall pay in advance to the keeper of the jail, for the sup-
 16 port of the defendant or debtor, twenty-five cents for each days'
 17 detention, which shall be charged with the expenses of serving the
 18 writ or execution.

Time allowed
to procure bail,
etc.
1787, 29, §§ 1, 2.
R. S. 98, §§ 1, 4.
1833, 413.
1835, 444, § 12.
1837, 141, §§ 4,
18; 258.
G. S. 124, § 9.
1873, 352, § 3.
P. S. 162, § 27.
1888, 419, § 5.
1889, 415, §§ 5, 6.
7 Gray, 581.
100 Mass. 300.
157 Mass. 374.
174 Mass. 307.

1 SECTION 30. When taken before the magistrate, the defendant or
 2 debtor may recognize with surety or sureties in a sum not less than
 3 the amount of the execution, or of the ad damnum in the writ if he
 4 is arrested on mesne process, that within thirty days from the day of
 5 his arrest he will deliver himself up for examination before a police,
 6 district or municipal court, or a trial justice, giving notice of
 7 the time and place thereof as herein provided, and appear at the
 8 time fixed for his examination and from time to time until the
 9 same is concluded, and not depart without leave of the magistrate,
 10 making no default at any time fixed for his examination, and
 11 abide the final order of the magistrate thereon; but if he is arrested
 12 on mesne process and the writ is returnable within thirty days, the
 13 number of days within which he shall deliver himself up shall be
 14 limited by the magistrate so as not to extend beyond the return day of
 15 the writ.

Recognizance,
etc.
1835, 444, §§ 4, 9,
12.
1837, 141, §§ 10,
18.
G. S. 124, § 10.
P. S. 162, § 28.
1888, 419, § 6.
1891, 271.
11 Gray, 226.
7 Allen, 349, 466.
10 Allen, 344.
103 Mass. 549.
106 Mass. 118.
109 Mass. 503.
117 Mass. 1.
118 Mass. 135.
120 Mass. 147,
594.
121 Mass. 283,
415.
122 Mass. 412.
124 Mass. 260,
557.

126 Mass. 310.
139 Mass. 38.
142 Mass. 107.

144 Mass. 14.
146 Mass. 89.
157 Mass. 508.

162 Mass. 17.
165 Mass. 106.
166 Mass. 296.

168 Mass. 102, 373.
169 Mass. 61.
174 Mass. 307.

1 SECTION 31. If a debtor arrested on execution is surrendered by
 2 his surety, he may recognize anew for such appearance at the time,
 3 place and upon the conditions expressed in the former recognizance.

A person sur-
rendered, etc.,
may recognize
anew.
G. S. 124, § 11.

P. S. 162, § 29.

104 Mass. 433.

1 SECTION 32. A defendant arrested on mesne process who has
 2 recognized or given bail may, without a surrender by his surety or
 3 sureties, take the oath that he does not intend to leave the com-
 4 monwealth, or the oath for the relief of poor debtors; and the tak-
 5 ing of either of said oaths by him shall be a discharge of his surety
 6 or sureties.

Oath without
surrender by
surety.
1873, 352, § 1.
P. S. 162, § 30.

1 SECTION 33. If the defendant or debtor, when taken before the
 2 magistrate or at any time when entitled thereto, desires to take an
 3 oath as hereinafter provided, and to have a time fixed therefor, a

Notice when
debtor desires
to take oath.
1736-7, 13, § 1.
1737-8, 17, § 1.

1741-2, 6, § 1.
 1759-60, 12, § 1.
 1762-3, 18, § 1.
 1787, 29, § 1.
 1834, 167, § 2.
 R. S. 98, §§ 2, 18.
 1842, 56, § 1.
 1844, 154, §§ 2,
 10.
 1855, 444, §§ 4,
 5, 12.
 1857, 141, §§ 4,
 5, 18, 20.
 G. S. 124, § 12.
 P. S. 162, § 31.
 1888, 419, § 7.
 8 Cush. 289.
 8 Gray, 244.
 105 Mass. 341.
 106 Mass. 118.
 109 Mass. 216.
 111 Mass. 76.
 124 Mass. 397,
 399.
 126 Mass. 186.
 129 Mass. 451.

police, district or municipal court or trial justice, in the county in which the arrest was made, shall appoint a time and place for the examination of the defendant or debtor, and shall issue a notice thereof to the plaintiff or creditor, in the manner provided in section seventy-three, substantially in the following form: —

To A—— B——: C—— D——, arrested on mesne process (or execution) in your favor, desires to take the oath for the relief of poor debtors, (or, the oath that he does not intend to leave the commonwealth,) at (naming the day, hour and place).

Date, signature and teste as provided in section seventy-three.

Notice may be given that the defendant arrested on mesne process desires to take both of said oaths, and the form of notice may be varied accordingly.

157 Mass. 374.

160 Mass. 317.

Service of notice.

1736-7, 13, § 1.
 1737-8, 17, § 1.
 1741-2, 6, § 1.
 1759-60, 12, § 1.
 1762-3, 18, § 1.
 1787, 29, § 1.
 1811, 85, § 2.
 1834, 167, § 2.
 R. S. 98, §§ 2, 3,
 18, 19.
 1842, 56, § 1.
 1844, 154, §§ 2, 5.
 1855, 444, §§ 4, 5,
 12.
 1857, 141, §§ 4, 5.
 G. S. 124, § 13.
 1861, 112.
 P. S. 162, § 32.
 3 Met. 568.
 7 Cush. 265.
 7 Allen, 354.
 109 Mass. 216.
 112 Mass. 58.
 113 Mass. 507.
 114 Mass. 74.
 115 Mass. 236,
 358.

SECTION 34. Such notice shall be served by an officer qualified to serve civil process, by giving to the plaintiff or creditor, or his agent or attorney, an attested copy thereof, or by leaving such copy at the last and usual place of abode of the plaintiff or creditor, or his agent or attorney. The time of service shall be not less than one hour, and, if service is made at the last and usual place of abode, not less than one day, before the time appointed for the examination, and there shall be allowed also not less than one hour for every mile of travel. If there is more than one plaintiff or creditor, or more than one agent or attorney, service on one shall be sufficient. If the plaintiff or creditor is dead or not a resident in the county in which the arrest is made, and no such agent or attorney is found within the county, the notice may be served on the officer who made the arrest. The person who made the writ may in all cases be regarded as the attorney of the plaintiff or creditor, if an arrest is made on the writ or on an execution issued thereon.

119 Mass. 191.
 121 Mass. 319.

123 Mass. 52.
 124 Mass. 178, 181.

132 Mass. 214.
 135 Mass. 411.

145 Mass. 340.

New notice.

R. S. 98, § 39.
 1848, 286.
 1850, 212.
 1857, 141, § 27.
 G. S. 124, § 14.
 P. S. 162, § 33.
 1888, 419, § 8.
 113 Mass. 355.
 125 Mass. 425.
 127 Mass. 158.
 128 Mass. 404.

SECTION 35. If a defendant or debtor has given notice of his desire to take the oath for the relief of poor debtors, a new notice thereof shall not be given within seven days from the service of the former notice, unless the former notice was insufficient in form or service. If the oath for the relief of poor debtors has been refused, an application to take it shall not be made by the defendant or debtor within seven days from the hour of such refusal.

157 Mass. 509.

158 Mass. 328.

Examination of debtor.

1855, 444, § 5.
 1857, 141, §§ 6, 7.
 G. S. 124, § 15.
 1860, 215, § 2.
 P. S. 162, § 34.
 1888, 419, § 9.

SECTION 36. If such notice has been duly served, the magistrate who issued it, or any magistrate named in section thirty-three, shall attend at the time and place therein specified, and examine the defendant or debtor as herein provided.

6 Allen, 287.

111 Mass. 481.

13 Gray, 396.

122 Mass. 412.

Adjournment.

1817, 186, § 1.
 1820, 9, § 2.
 R. S. 98, § 5.
 1857, 141, § 7.
 G. S. 124, § 16.
 P. S. 162, § 35.

SECTION 37. The magistrate may adjourn the case from time to time, and shall have the same powers relative to all other incidents thereto as other courts or trial justices have in civil actions; and witnesses duly summoned shall attend as required in civil cases.

6 Allen, 287.
 7 Allen, 354.

8 Allen, 150.
 11 Allen, 29, 395.

14 Allen, 157.
 124 Mass. 383.

147 Mass. 69.
 177 Mass. 206.

1 SECTION 38. Pending the examination and at any time after the
2 defendant or debtor is taken before a magistrate, a magistrate named
3 in section twenty-nine may accept his recognizance with surety or
4 sureties in a sum not less than the amount of the execution, or of
5 the ad damnum in the writ if he is arrested on mesne process, that
6 he will appear at the time fixed for his examination, and from time
7 to time until the same is concluded, and not depart without leave
8 of the magistrate, making no default at any time fixed for his ex-
9 amination, and abide the final order of the magistrate thereon. No
10 recognizance under the provisions of this chapter, except in case of
11 appeal under the provisions of section fifty-three, shall be accepted
12 after the oath has been once refused to the debtor.

Recognizance
pending exam-
ination.
R. S. 98, § 37.
1855, 444, §§ 9,
12.
1857, 141, §§ 10,
18.
G. S. 124, § 17.
P. S. 162, § 36.
1 Allen, 463.
6 Allen, 285, 288.
7 Allen, 266, 360.
8 Allen, 148, 150.
9 Allen, 379.
11 Allen, 395.
121 Mass. 415.
123 Mass. 333.
126 Mass. 310.
142 Mass. 107.

1 SECTION 39. If the defendant or debtor desires to take an oath
2 and to have a time fixed for his examination, but does not recognize
3 to the satisfaction of the magistrate as provided in the preceding
4 section, the magistrate may make a certificate thereof, which shall
5 be attached to the writ or execution, and the defendant or debtor
6 shall be committed to jail until the next sitting of the court for
7 the transaction of business or until the time fixed for his examina-
8 tion, when he shall be delivered by the jailer to the officer who
9 makes the arrest, to be by him taken before the magistrate.

Defendant not
recognizing
may be im-
prisoned.
1889, 413, § 4.

1 SECTION 40. If the defendant or debtor, arrested on mesne pro-
2 cess or on execution without notice under the provisions of section
3 eighteen, has given notice that he desires to take an oath that he
4 does not intend to leave the commonwealth, he shall be examined
5 relative thereto, and either party may introduce additional evidence.
6 If the magistrate is satisfied that the defendant or debtor did not
7 when arrested, and does not at the time of examination, intend to
8 leave the commonwealth, he shall make certificate thereof, and dis-
9 charge the defendant or debtor from arrest; and immediately upon
10 such discharge, if the creditor so desires, such debtor shall be re-
11 quired, without further notice, to submit to examination under the
12 provisions of sections twenty to twenty-five, inclusive, upon the
13 charges in the affidavit annexed to the execution on which he was
14 arrested.

— may be
discharged,
when.
1855, 444, § 12.
1857, 141, § 20.
G. S. 124, § 18.
1873, 352, §§ 1, 3.
1877, 250, § 5.
P. S. 162, § 37.
105 Mass. 385.
127 Mass. 60.

1 SECTION 41. If the defendant or debtor has given notice that he
2 desires to take the oath for the relief of poor debtors, the magistrate
3 shall examine him on oath relative to his property, the disposal
4 thereof and his ability to pay the debt or satisfy the cause of action
5 for which he is arrested: and either party may introduce additional
6 evidence. The plaintiff or creditor may upon such examination
7 propose to the defendant or debtor interrogatories pertinent to the
8 inquiry, and the examination shall, if required by either party, be
9 in writing, in which case it shall be signed and sworn to by the
10 defendant or debtor, and preserved by the magistrate.

Examination
relative to
ability to pay,
etc.
1817, 186, § 1.
1834, 167, § 2.
R. S. 98, §§ 6, 7,
20.
1844, 56, § 3;
154, § 6.
1855, 444, § 6.
1857, 141, §§ 6,
18.
G. S. 124, § 19.
P. S. 162, § 38.
157 Mass. 442.
163 Mass. 404.

1 SECTION 42. If the plaintiff or creditor, after request, makes
2 default in payment of the fees, or if the plaintiff or creditor or a
3 person in his behalf does not attend the examination, the defendant
4 or debtor shall, without examination and without payment of fees,
5 be discharged from arrest or imprisonment and shall be exempt

Discharge
upon non-pay-
ment of fees,
etc.
1855, 444, § 14.
1857, 141, § 29.
G. S. 124, § 48.
P. S. 162, § 68.

1 Allen, 492.
9 Allen, 378.
111 Mass. 288.
133 Mass. 256.

from further arrest upon the same execution or any process founded on the judgment, and a certificate of such discharge signed by the magistrate shall be annexed to the writ or execution; but if, after the oath has once been refused, the defendant or debtor again applies for the benefit thereof, the fees for such subsequent application or examination thereon shall be paid by him.

If magistrates
satisfied, etc.,
he may admin-
ister oath.

1698, 11, § 1.
1727-8, 9, § 1.
1732-3, 7, § 1.
1736-7, 13, § 1.
1737-8, 17, § 1.
1741-2, 6, § 1.
1759-60, 12, § 1.
1762-3, 18, § 1.
1787, 29, § 2.
1805, 100, § 2.
1816, 55.
1817, 186, § 1.
1834, 167, § 2.
R. S. 98, §§ 8, 9,
21.
1855, 444, §§ 6,
12.
1857, 141, §§ 8,
19.

SECTION 43. If, upon the examination, the magistrate is satisfied of the truth of the facts set forth in the oath to be taken by the defendant or debtor, and in the certificate provided for in the following section, and it appears to him that the defendant or debtor is entitled to his discharge, he shall administer to him the following oath:—

Oath for the Relief of Poor Debtors.

I [repeat the name] do solemnly swear that I have not any property to the amount of twenty dollars except the property which is by law exempt from being taken on execution, but not excepting intoxicating liquors; and that I have not any other property now conveyed, concealed, or in any way disposed of, with the design to secure the same to my own use or to defraud my creditors. So help me God.

6 Gray, 251.

G. S. 124, § 21.
9 Allen, 376.

1873, 343.

137 Mass. 467.

P. S. 162, § 39.

159 Mass. 446.

Certificate of
magistrate, and
effect of
discharge.
Death of cred-
itor.

1698, 11, § 5.
1732-3, 7, § 5.
1736-7, 13,
§§ 1, 6.
1737-8, 17,
§§ 1, 6.
1741-2, 6, §§ 1, 4.
1759-60, 12,
§§ 1, 4.
1762-3, 18,
§§ 1, 4.
1787, 29, §§ 2, 4.
1816, 55.
R. S. 98, §§ 10,
11, 14, 16.
1842, 56, § 4.
1844, 154, §§ 7, 8.
1855, 444, §§ 7,
12.
1857, 141, §§ 9,
19.
G. S. 124, § 22.
1873, 352, § 3.
P. S. 162, § 40.
7 Met. 287.
6 Gray, 251.
1 Allen, 456.
6 Allen, 285.
7 Allen, 266,
466.
111 Mass. 288.
117 Mass. 4.
121 Mass. 554.
142 Mass. 108.

SECTION 44. After administering the oath, the magistrate shall make a certificate thereof as follows:—

—, ss. This certifies that A— B—, a poor prisoner arrested upon execution, (or on mesne process,) has caused E— F—, the creditor (or plaintiff) at whose suit he is arrested, to be notified according to law of his desire to take the benefit of the law for the relief of poor debtors; that it appears that said A— B— has not any property to the amount of twenty dollars, except the property which is by law exempt from being taken on execution, but not excepting intoxicating liquors; and has not any other property now conveyed, concealed or in any way disposed of, with design to secure the same to his own use or defraud his creditors. And after due examination of said A— B—, the oath for the relief of poor debtors was administered to him.

Date, signature and teste as provided in section seventy-three.

Upon taking the oath, the defendant or debtor shall be discharged from arrest or imprisonment, and shall be forever exempt from arrest on the same execution, or on any process founded on the judgment, or on the same cause of action, unless convicted of having wilfully sworn falsely on his examination. If he is arrested or committed on execution, the judgment shall remain in full force against his property and the creditor may take out a new execution against his property as if he had not been committed; and if he is committed on mesne process, any execution which may afterward issue on a judgment for the same cause of action shall issue against his property and not against his body. The death of the execution creditor shall not affect proceedings instituted under the provisions of this chapter.

Debtor on bail,
etc., may be
discharged.
1873, 352, § 3.
P. S. 162, § 41.
105 Mass. 385.

SECTION 45. If a person is arrested or has given bail or is imprisoned on mesne process, or is arrested or imprisoned on any execution, he may be discharged in the same manner and subject to the same provisions of law as a person arrested on an execution mentioned in section seventeen.

1 SECTION 46. No debtor shall be entitled to the benefit of the
2 oath for the relief of poor debtors after a writ of scire facias on the
3 bail bond given by him in the original action has been served upon
4 his bail, unless he pays all costs which have accrued on such scire
5 facias.

Debtor not
entitled to
oath, after
scire facias,
until.
1844, 154, § 9.
1857, 141, § 23.
G. S. 124, § 24.
P. S. 162, § 42.

IMPRISONMENT.

1 SECTION 47. If a defendant arrested on mesne process and taken
2 before the magistrate does not desire to take an oath or fails to
3 recognize to the satisfaction of the magistrate as before provided,
4 and does not give bail, or if on his examination he does not satisfy
5 the magistrate that he does not intend to leave the commonwealth,
6 and the oath for the relief of poor debtors is refused him, and he
7 does not give bail, the magistrate shall make a certificate thereof,
8 and the defendant shall be committed to jail until final judgment in
9 the action in which he was arrested. If the final judgment is against
10 him, he shall, unless discharged by the plaintiff, be held for thirty
11 days thereafter, so that he may be taken on execution; but, if the
12 oath for the relief of poor debtors has not been refused him, he shall
13 be discharged if he recognizes as aforesaid, gives bail or bond as pro-
14 vided in section sixty or takes the oath for the relief of poor debtors
15 or an oath that he does not intend to leave the commonwealth.

Commitment
when arrested
on mesne proc-
ess.
1701-2, 5, § 11.
1784, 28, § 10.
R. S. 90, § 112.
1855, 444, § 12.
1857, 141, §§ 21,
22.
G. S. 124, § 25.
P. S. 162, § 43.
10 Gray, 491.
8 Allen, 150.
112 Mass. 394.
127 Mass. 60.

1 SECTION 48. If a debtor arrested on execution and taken before
2 the magistrate does not desire to take an oath, or fails to procure
3 surety or sureties to the satisfaction of the magistrate as before pro-
4 vided, or if, upon his examination, the oath or oaths are refused to
5 him, of which refusal a certificate shall be annexed to the execution,
6 he shall be committed to jail until he has recognized as herein pro-
7 vided if the oath for the relief of poor debtors has not been refused
8 him, or until the execution is satisfied, or until he is released by the
9 creditor, or until he has given notice as before provided and taken
10 the oath for the relief of poor debtors or the oath that he does
11 not intend to leave the commonwealth, in cases in which such oath
12 is permitted.

— when
arrested on
execution.
1787, 29, § 3.
R. S. 98, § 12.
1857, 141, § 11.
G. S. 124, § 26.
P. S. 162, § 41.
9 Cush. 289.
11 Gray, 226.
112 Mass. 394.
137 Mass. 25.
166 Mass. 33.

1 SECTION 49. If the defendant or debtor confined in jail on mesne
2 process or execution in a civil action claims support as a pauper, the
3 jailer shall furnish his support at the rate of one dollar and seventy-
4 five cents a week, to be paid by the plaintiff or creditor, who in such
5 ease shall, if required by the jailer, either from time to time advance
6 the money necessary for the support of the prisoner or give the jailer
7 satisfactory security therefor. If the plaintiff or creditor neglects so
8 to do for twenty-four hours after demand, the jailer shall discharge
9 the prisoner. Such demand may be made of the officer who made
10 the commitment or of the plaintiff or creditor or his attorney at any
11 time after the prisoner has claimed such support.

Support in jail.
C. L. 6, § 3; 128,
§ 2.
1706-7, 2.
1819, 94, § 3.
1821, 22, §§ 1, 2.
R. S. 90, §§ 113,
114; 97, §§ 48-
53.
1857, 141, § 25.
G. S. 124, § 27.
P. S. 162, § 45.
16 Gray, 166.
168 Mass. 375.

1 SECTION 50. If a debtor committed on execution claims support
2 as a pauper, the creditor may at any time thereafter order his dis-
3 charge. If a debtor is so discharged by order of the creditor, or by
4 the jailer for want of security or of an advance of money as before
5 provided, the debt and costs with all amounts paid by the creditor

Discharge by
creditor.
Effect.
1819, 94, § 2.
1821, 22, § 4.
R. S. 97, §§ 58,
59.
G. S. 124, §§ 28,
29.

P. S. 162, §§ 46,
47.
9 Cush. 290.
105 Mass. 385.
163 Mass. 214.

for the debtor's support in prison shall remain a legal claim against 6
his property, and may be enforced accordingly in the same manner 7
as if he had not been committed on the execution; but he shall 8
not thereafter be liable to arrest or imprisonment for the same debt, 9
costs or charges. 10

Property
liable for
support.
R. S. 97, § 60.
G. S. 124, § 30.
P. S. 162, § 48.

SECTION 51. If the debtor undertakes to satisfy the execution, 1
he shall not be entitled to be discharged until he has paid all charges 2
for his support in jail, both upon the arrest on the original writ and 3
upon the commitment on execution, in addition to the amount due 4
on the execution and the costs and charges thereon. 5

FRAUDULENT DEBTORS.

When fraud is
charged,
debtor to
plead, etc.
1788, 16, § 3.
R. S. 98, §§ 23,
27, 28, 30, 31.
1844, 154, § 11.
1848, 168.
1855, 444, §§ 2, 8.
1857, 141, §§ 12,
16, 18.
G. S. 124, §§ 20,
31.
1872, 281, § 1.
P. S. 162, § 49.
1 Allen, 385.
7 Allen, 266.
100 Mass. 287.
124 Mass. 92.
127 Mass. 550.
130 Mass. 189.
133 Mass. 127,
256.
142 Mass. 96.
150 Mass. 411.
162 Mass. 14.

SECTION 52. If any of the five last named charges in section 1
seventeen is made as therein provided, or if the plaintiff or creditor 2
or a person in his behalf, at any time pending the examination of 3
a defendant or debtor who has given notice of his desire to take the 4
oath for the relief of poor debtors, files such charges in writing, 5
subscribed and sworn to by the plaintiff or creditor or by a person 6
in his behalf, the charges shall be considered in the nature of an 7
action at law, to which the defendant or debtor may plead that he is 8
guilty or not guilty, and the magistrate may thereupon hear and 9
determine the same. If a person arrested on execution, after such 10
arrest, mispends or misuses to the amount of forty dollars, or to an 11
amount equal to that for which he is arrested or committed, his prop- 12
erty which is not exempt from being taken on execution, but which 13
cannot be attached by ordinary process of law, without first having 14
offered such property to the arresting creditor in satisfaction or part 15
satisfaction of his debt, the charge of such mispending or misuse 16
may be filed in the manner herein provided for filing charges of 17
fraud. The plaintiff or creditor shall not upon the hearing give 18
evidence of a charge of fraud which is not made or filed as herein 19
provided, nor of a fraudulent act of the debtor which was committed 20
more than three years before the commencement of the original 21
action. 22

Appeal.
R. S. 98, §§ 27,
32, 34, 35.
1857, 141, § 13.
G. S. 124, § 32.
P. S. 162, § 50.
9 Met. 447.
3 Gray, 318.
10 Gray, 491.
100 Mass. 287.
126 Mass. 28.

SECTION 53. A party aggrieved by a judgment rendered under 1
the provisions of the preceding section may appeal to the superior 2
court, in like manner as from the judgment of a trial justice in 3
civil actions. The trial in the superior court shall be by a jury, 4
unless the court with the consent of both parties hears and deter- 5
mines it without a jury. 6

133 Mass. 256.

137 Mass. 25.

140 Mass. 171.

150 Mass. 411.

— proceedings
on.
R. S. 98, §§ 33,
34.
1857, 141, § 14.
G. S. 124, § 33.
P. S. 162, § 51.
10 Gray, 491.
1 Allen, 385.
112 Mass. 394.
150 Mass. 411.

SECTION 54. If the plaintiff or creditor appeals, he shall before 1
the allowance of the appeal recognize with sufficient surety or sure- 2
ties to enter and prosecute his appeal with effect, to produce at the 3
superior court a copy of all the proceedings upon said charges, 4
and to pay all costs if judgment is not reversed. If the defendant 5
or debtor appeals, he shall recognize in like manner, and with the 6
further condition, that if final judgment is against him he will, within 7
thirty days thereafter, surrender himself to be taken on execution 8

9 and abide the order of the court, or pay to the plaintiff or creditor
10 the whole amount of the original judgment against him.

1 SECTION 55. If the defendant or debtor, after any one of said
2 charges has been made or filed against him, voluntarily makes de-
3 fault at a time appointed for the hearing, or if upon a final trial he
4 is found guilty of any of them, he shall have no benefit from the
5 proceedings under the provisions of this chapter, and may be sen-
6 tenced to imprisonment for not more than one year. But the
7 defendant or debtor, after the expiration of any sentence, may
8 renew his application for the oath for the relief of poor debtors, as
9 though he had not been found guilty and sentenced.

150 Mass. 411.

151 Mass. 419.

159 Mass. 446.

Debtor, upon
default, etc.,
may be denied
oath, etc.
R. S. 98, § 36.
1857, 141, § 15.
G. S. 124, § 34.
1872, 281, § 2.
P. S. 162, § 52.
9 Met. 447.
3 Gray, 318.
105 Mass. 517.
110 Mass. 18.
125 Mass. 47.
137 Mass. 467.

DISCHARGE OF DEBTORS OF THE COMMONWEALTH.

1 SECTION 56. If a debtor committed to prison on a warrant of
2 distress in favor of the commonwealth is unable to pay the debt for
3 which he is imprisoned, he shall be entitled to his discharge in like
4 manner as poor debtors arrested on execution: and all the proceed-
5 ings shall conform as nearly as may be to the provisions of law
6 relative to such debtors, except as hereinafter provided.

Discharge of
debtors of
common-
wealth.
1855, 276, §§ 1, 2.
G. S. 124, § 35.
P. S. 162, § 53.

1 SECTION 57. If he represents to the jailer that he desires to take
2 the oath for the relief of poor debtors, the jailer shall make the same
3 known to a police, district or municipal court, or a trial justice. The
4 magistrate shall thereupon appoint a time and place for the examina-
5 tion of the debtor, and shall notify the district attorney for the dis-
6 trict by a notice, which shall be served on him personally by an
7 attested copy thereof or by leaving the same at his usual place of
8 abode, thirty days at least before the time appointed for the examina-
9 tion.

Same subject.
1855, 276, §§ 2, 3.
G. S. 124, § 36.
P. S. 162, § 54.
1888, 419, § 10.
7 Cush. 536.

1 SECTION 58. If the place appointed for the examination is out-
2 of the city or town in which the district attorney resides or if he is
3 unable to attend the examination, he may appoint counsel in his
4 stead; and, for such attendance by himself or counsel, suitable allow-
5 ance shall be made by the superior court for the county.

Same subject.
1855, 276, § 5.
G. S. 124, § 37.
P. S. 162, § 55.

DISCHARGE OR REMOVAL OF INSANE DEBTORS.

1 SECTION 59. If a defendant or debtor imprisoned on mesne proc-
2 ess or execution is supposed to be insane and incapable of taking
3 the oath for the relief of poor debtors, any person may file a pe-
4 tition in any court named in section thirty-three of chapter eighty-
5 seven for the county in which he is imprisoned, stating the facts.
6 The judge shall appoint a time and place for a hearing and exami-
7 nation, and shall order notice thereof to be given to the creditor or
8 his attorney seven days before the time appointed, and in other re-
9 spects shall proceed as provided in chapter eighty-seven for cases
10 of insane persons not under arrest. If satisfied upon the exami-
11 nation that the person is insane, the judge may order his discharge
12 or removal to any of the state insane hospitals or to such other

Insane debtors.
1848, 320, §§ 1, 3.
G. S. 124, §§ 38,
39.
P. S. 162, §§ 56,
57.

place as is provided by law for insane persons in any city or town in
this commonwealth. The legal rights of the creditor shall not be
affected by such discharge or removal.

JUDGMENT DEBTORS IMPRISONED OR ON BAIL.

Discharge
upon final
judgment.
1837, 198, § 1.
G. S. 124, § 40.
P. S. 162, § 58.

SECTION 60. A person imprisoned in a civil action when final
judgment in such action is rendered against him shall be discharged,
upon giving to the creditor a bond with sufficient surety or sureties
to be approved by a magistrate named in section one in a sum not
less than double the amount of the judgment and conditioned that
he shall surrender himself at the same jail to the jailer, between
the hours of eight and ten o'clock of the forenoon of the thirtieth
day next after the rendition of said judgment, or if said day falls
on Sunday, on the next following day, which day shall be specified
in the bond, and there remain until five o'clock of the afternoon of
the same day, so that he may be taken on the execution on said
judgment.

Proceedings
when execu-
tion issues.
1837, 198, § 3.
1857, 141, § 3.
G. S. 124, § 41.
P. S. 162, § 59.

SECTION 61. If an execution on such judgment amounting to
twenty dollars exclusive of costs, and upon which so much as that
amount remains uncollected, is delivered to an officer qualified to
serve it, with the affidavit required for the arrest of a debtor on
execution, such officer may, within thirty days after the rendition of
the judgment on which such execution is issued, leave it or a copy
thereof with the jailer; and the debtor shall, upon the surrender of
himself as provided in said bond, be committed upon the execution in
like manner as if he had been taken and committed thereon by the
officer to whom it was delivered. The officer shall make return in
like manner and be entitled to the same fees as if the execution
had been served in the common form.

Same subject.
1837, 198, §§ 3, 4.
G. S. 124, § 42.
P. S. 162, § 60.

SECTION 62. The jailer shall, immediately after the expiration of
said thirty days, certify upon the execution or copy so left with him
the fact that such debtor has or has not surrendered himself, and shall
give a similar certificate to the officer, upon request, which shall be
annexed to his return on the execution; and such certificate shall
be sufficient authority to the officer to make his return accordingly.
Such return, with the certificate annexed thereto, shall be prima
facie evidence of the fact on the question of breach of condition of
the bond and in other cases. A jailer who gives a false certificate,
shall be liable in damages to any person injured thereby.

Bond by per-
son surren-
dered by bail
after final
judgment.
1837, 198, § 5.
G. S. 124, § 43.
P. S. 162, § 61.

SECTION 63. If a person who has given bail on mesne process in
a civil action is surrendered by his bail after final judgment in such
action, he shall be released upon giving to the creditor a bond as
provided in section sixty, except that the condition thereof shall be
for his surrender at the same jail on the thirtieth day next after
the surrender by his bail. The day on which the same will fall,
and, if there is more than one jail in the same county, the jail at
which the surrender is to be made, shall be specified in the condi-
tion of the bond. All the other provisions relative to the bond
which are mentioned in section sixty shall apply to such bond.

1 SECTION 64. The provisions of the four preceding sections shall
2 not prevent an officer from taking the debtor and committing him
3 to jail on such execution within thirty days after the rendition
4 of judgment or surrender by the bail as he might have done if such
5 bond had not been given; and such commitment of the debtor shall
6 be equivalent to his surrender according to the condition of his bond,
7 and shall discharge it.

Debtor may be
committed
within thirty
days after
judgment.
1837, 198, § 6.
G. S. 124, § 44.
P. S. 162, § 62.

SURRENDER OF PRINCIPAL ON RECOGNIZANCES.

1 SECTION 65. Whoever recognizes as surety for another as pro-
2 vided in this chapter may at any time before breach of the recog-
3 nizance surrender his principal and exonerate himself from further
4 liability, in the manner provided for the surrender by bail, and all
5 the proceedings on such surrender shall be the same as provided in
6 the case of bail.

Proceedings.
1857, 141, § 26.
G. S. 124, § 45.
P. S. 162, § 63.
121 Mass. 400.
122 Mass. 534.

REMEDY ON RECOGNIZANCES AND BONDS, AND FOR ESCAPES.

1 SECTION 66. If a recognizance or bond taken under the pro-
2 visions of this chapter is broken, the creditor may, within one year
3 after such breach, commence an action thereon; and judgment shall
4 be entered for the amount of the penalty, but execution shall issue
5 for so much thereof only as may be justly and equitably due. If
6 the recognizance was taken on an execution, the execution in such
7 action shall not issue for less than the amount due on the original
8 judgment, with costs and charges arising after the issuing of the
9 original execution. Such actions in favor of the commonwealth
10 shall be brought in the court in which the original judgment was
11 rendered.

Remedy on
recognizances
and bonds.
1837, 198, § 2.
1857, 141, § 28.
G. S. 124, § 46.
1870, 313, § 1.
P. S. 162, §§ 64,
65.
2 Allen, 75.
5 Allen, 313.
98 Mass. 31.
142 Mass. 107.
146 Mass. 89.
162 Mass. 17.
170 Mass. 428.
173 Mass. 475.

1 SECTION 67. If a prisoner who has been arrested or committed
2 on execution in a civil action escapes with the consent or by the
3 negligence of the officer, the creditor may in an action of tort against
4 the officer recover such damages as he has suffered by the escape,
5 and may also have against the original debtor a scire facias or an
6 action on the judgment.

Remedy for an
escape.
1833, 134.
R. S. 97, §§ 71,
72.
G. S. 124, § 47.
P. S. 162, § 66.
2 Gray, 214.
10 Gray, 365.

4 Allen, 74.

6 Allen, 260.

PROVISIONS RELATIVE TO MAGISTRATES.

1 SECTION 68. A justice of a police, district or municipal court,
2 or a special justice when exercising the powers and duties of a
3 justice of such court may act under the provisions of this chap-
4 ter. Unless the context otherwise requires, the word "magistrate"
5 as used in this chapter shall include the word "court", and in sec-
6 tions eighty to eighty-six, inclusive, the word "court" as applied
7 to the county of Nantucket shall include the words "trial justice".

What justices
may act.
1888, 419, § 12.
1898, 559.
1899, 445, § 2.
100 Mass. 300.
157 Mass. 374.
Definitions.

1 SECTION 69. If a magistrate fails to attend at the time and place
2 to which any process under the provisions of this chapter is return-
3 able or continued before him, any other magistrate named in sec-
4 tion one may attend at such time and place and may continue the
5 proceeding for not more than thirty days, without costs, saving the
6 rights of all parties; and he shall make a certificate thereof, which

Continuance if
magistrate
fails to attend.
1870, 77.
P. S. 162, § 67.

shall be by him delivered to the magistrate before whom such process is pending. 7
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Defendant not
to be defaulted
if magistrate
absent, etc.
1887, 442, § 3.
144 Mass. 14.
163 Mass. 79.
165 Mass. 108.

SECTION 70. A defendant or debtor who has been arrested on mesne process or execution shall not at any appointed hearing suffer default by reason of the absence or disability of a magistrate qualified to act, if, within three days thereafter, such defendant or debtor shall provide for a continuance of the hearing by issuing a new notice to the creditor, which shall be served as provided in section thirty-four. 1
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Appeals.
1888, 419, § 12.
1898, 559.
10 Gray, 491.
8 Allen, 150.

SECTION 71. There shall be no appeal from a judgment or order of a magistrate under the provisions of this chapter, except as expressly provided in section fifty-three. 1
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Habeas corpus.
1888, 419, § 12.
1898, 559.

SECTION 72. A magistrate acting under the provisions of this chapter may issue a writ of habeas corpus to bring before him for examination or for entering into a recognizance a defendant or debtor who has been imprisoned on mesne process or execution, and the proceedings thereon shall be in accordance with the provisions of chapter one hundred and ninety-one so far as applicable. 1
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Notices, etc., to
be under seal
of court.
1889, 415, § 2.
157 Mass. 375.

SECTION 73. All certificates, notices and other processes required by the provisions of this chapter, if issued by a police, district or municipal court having a clerk, shall be under the seal of the court, signed by the clerk or an assistant clerk thereof, and bear teste of a justice of the court who is not an interested party in the proceeding, and, if issued by a court having no clerk or by a trial justice, shall be signed by the magistrate with the designation of his office. 1
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FEEES AND COSTS.

Entry fee in
municipal,
etc., courts.
1891, 313.

SECTION 74. Upon the commencement of any proceedings under the provisions of the preceding sections of this chapter relative to male debtors in a police, district or municipal court, there shall be paid to the clerk, if any, of such court, otherwise to the justice thereof, an entry fee of three dollars, which shall be in payment for hearing applications, for examinations and continuances, and the issuing of all notices and certificates required in such proceedings. 1
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Other fees of
magistrates.
1817, 186, § 1.
R. S. 98, § 41.
1848, 324, § 2.
1855, 249, § 1;
276, § 6.
1857, 141, § 29.
G. S. 124, §§ 48,
49.
1866, 193, § 1.
P. S. 162, § 68.
1888, 419, § 13.
1889, 415, § 6.
3 Allen, 245.

SECTION 75. Except as provided in the preceding section and in section fourteen, the fees of the magistrate under the provisions of the preceding sections of this chapter shall be paid in advance as follows: for hearing an application for a certificate to arrest, one dollar; for approving or disapproving sureties and taking a recognizance after arrest, one dollar and fifty cents; for each day spent in examination, three dollars; for each postponement or continuance of an examination or the time fixed therefor, one dollar, which shall be paid by the party requesting such postponement or continuance; for any notice or certificate required, one dollar; for a writ of habeas corpus mentioned in section seventy-two, one dollar; for approving a bond under the provisions of sections sixty and sixty-three, one dollar, which shall be paid by the applicant. If the oath 1
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14 is not administered, such fees shall be allowed as part of the service
15 of the writ or execution.

1 SECTION 76. The fees of officers under the provisions of the pre-
2 ceding sections of this chapter shall be as follows: for the service
3 of notices, the same as for an original summons in an action at
4 law; for the service of a writ of habeas corpus mentioned in sec-
5 tion seventy-two, one dollar and the fee allowed for travel upon the
6 service of a summons; for each day's attendance before a magistrate
7 on the examination of a defendant or debtor in his custody, three
8 dollars.

Fees of offi-
cers.
1888, 419, § 13.
1889, 415, § 6.

1 SECTION 77. The fees of the jailer under the provisions of sec-
2 tions sixty-one and sixty-two, shall be as follows: on a surrender
3 of a debtor, fifty cents; and for a certificate thereof or of the non-
4 surrender of the debtor, twenty-five cents, which shall be paid by
5 the officer, and charged with the expenses of serving the execution.
6 In other cases where a certificate is required, the jailer shall be
7 entitled to a fee of twenty-five cents, which shall be paid by the
8 party requiring the same.

Fees of jailer.
1837, 198, § 4.
G. S. 124, § 50.
P. S. 162, § 69.

1 SECTION 78. Fees received under the provisions of this chapter
2 by a police, district or municipal court shall be considered as re-
3 ceived for civil business, and shall be accounted for and paid by the
4 clerk of said court, if any, otherwise by the magistrate thereof, to
5 the treasurer of the county in which such court is held; but, in the
6 county of Suffolk, such clerks and magistrates as by law account and
7 pay to the collector of the city of Boston shall so do hereunder.

Disposition of
fees.
1888, 419, § 13.
1889, 415, § 7.
1891, 313.
1897, 466, § 2.

1 SECTION 79. If the arrest was on mesne process and final judg-
2 ment in the action is rendered for the defendant, he shall have taxed
3 in his costs against the plaintiff all costs paid by him on account of
4 the arrest. If the arrest was on execution, the execution shall not
5 be satisfied until the debtor has repaid all costs paid by the creditor
6 upon and after arrest and all lawful charges paid by the creditor
7 for his support in prison. If the arrest was on mesne process and
8 the plaintiff shall recover more than twenty dollars, exclusive of
9 costs, the costs paid by him upon and after the arrest and all lawful
10 charges paid by him for the defendant's support in jail shall be
11 taxed in his costs.

Costs.
1888, 419, § 13.

EQUITABLE PROCESS AFTER JUDGMENT.

1 SECTION 80. Upon the filing of an application of a judgment
2 creditor, with an affidavit made by him or a person in his behalf that
3 the judgment is founded upon a claim for the necessities of life fur-
4 nished to the judgment debtor or his family, or for work or labor per-
5 formed by the judgment creditor for the judgment debtor, the justice
6 or clerk of a police, district or municipal court of the judicial district
7 in which the judgment debtor resides or, if he does not reside within
8 the district of any such court, the justice or clerk of a police, district
9 or municipal court held within the county and nearest to the town
10 in which the debtor resides, or in the county of Nantucket a trial
11 justice, shall issue a notice to said debtor to appear at a time and

Equitable
process after
judgment.
1898, 549, § 1.
1899, 445, § 1.
1901, 176.
173 Mass. 498.

place named therein to show cause why an examination into his circumstances should not be made and a decree be entered ordering him to pay such judgment in full or by instalments, weekly, monthly or otherwise. Said notice shall be served by delivering a copy thereof to the defendant or by leaving a copy at his last and usual place of abode, at least seven days before the return day thereof. At the hearing the court shall first ascertain if the creditor's claim is for the necessities of life, or for work or labor performed by the judgment creditor for the judgment debtor, as stated in his affidavit, and, if it so finds, it shall make inquiry, by examination of the judgment debtor or otherwise, as to his circumstances, his income from any source and his ability to pay said judgment; and if the debtor fails to appear at the time and place fixed, such inquiry may proceed in his absence. If it shall appear that said notice has not been served as herein required, the court may continue the proceedings and issue a new notice to the debtor. If the court finds that the debtor is not able at the time to pay said judgment in full or by partial payments from time to time, it shall enter a finding thereof, which shall be subject to revision upon like notice and inquiry and upon proof of changed circumstances. In such case, the clerk or justice shall not issue a subsequent notice to the debtor until the creditor or a person in his behalf has filed in court an affidavit stating in substance the evidence of the debtor's change of circumstances upon which he relies for a revision and until the court in its discretion has determined that there is occasion for a new inquiry into the debtor's circumstances. If the court finds that the debtor is able to pay the judgment in full or by partial payments from time to time, it may, after first allowing the debtor out of his income a reasonable amount for the support of himself and family, enter a decree fixing the time, place and amount of payments to be made by the debtor on said judgment out of his income in excess of said allowance.

Enforcement
of decree.
1898, 549, § 2.

SECTION 81. If the debtor at any time fails to comply with such decree the creditor may cause him to be notified to show cause therefor and, unless the debtor shows good cause therefor, the court may order that unless he complies with such decree or with such modification thereof as it may then make, within the time stated in said order, such failure shall be a contempt of court; and if, at the expiration of the time fixed by the court for compliance with such new decree, the debtor still fails or refuses to comply therewith, the court may enforce its decrees by proceedings for contempt as a court of equity might do; but not more than fourteen days' imprisonment shall be ordered by the court as punishment for any one such contempt. The debtor may be released by order of the court at any time, upon payment of the claim and costs or upon his giving a bond to the creditor, with one or more sureties who shall be approved by the court, conditioned that he will comply with all existing or subsequent decrees of the court; or, after seven days' imprisonment, he may be released by order of the court, upon filing in court his personal bond, conditioned that he will thenceforth comply with all decrees of the court. If the debtor is released upon his personal bond, as aforesaid, he may, if he does not comply with said decree within sixty days after his release or fails to show to the court good cause for his non-compliance, again be cited to

23 appear before the court by the creditor and proceeded against as for
24 a further contempt of court.

1 SECTION 82. A judgment debtor may himself apply by petition
2 for the benefit of the provisions of section eighty, and may cause a
3 creditor holding a judgment against him for the necessities of life
4 furnished to himself or his family to be cited to appear and show
5 cause why an examination, as hereinbefore provided, shall not be
6 made: and the court may, after a hearing, proceed in the case in the
7 same manner as if such application had been made by a creditor.

Application by
debtor.
1898, 549, § 3.

1 SECTION 83. If a judgment creditor institutes proceedings as
2 provided in section eighty, all other processes or suits to enforce
3 or recover upon any judgment upon which such proceedings are
4 based and all actions or proceedings by other creditors against such
5 judgment debtor, relative to wages, shall be suspended, except as
6 provided in the following section, until the judgment or judgments
7 on which such proceedings are based shall have been fully satisfied;
8 but the provisions of this section shall not prevent the attachment
9 of any property of the debtor other than his wages, either before or
10 after judgment, or the levy of the execution thereon.

Suspension of
other proceed-
ings.
1898, 549, § 4.

1 SECTION 84. A creditor who has recovered a judgment upon a
2 claim for the necessities of life against a debtor against whom pro-
3 ceedings by another judgment creditor are pending under the pro-
4 visions of the four preceding sections may, upon motion and after
5 notice to all parties in interest, inquire into the validity and amount
6 of the claim of any judgment creditor for whose benefit the decree
7 under the provisions of said sections has been entered. Upon the
8 hearing of such motion, the court may order any judgment creditor
9 who is then a party to the proceeding to render an account to the
10 court of all amounts theretofore paid by the debtor upon such judg-
11 ment, and may also, after a hearing, enter a decree revoking or
12 modifying any previous decree in the proceedings, and may order
13 that payments thereafter made by the judgment debtor be appor-
14 tioned between the different judgment creditors who are then par-
15 ties to such proceeding.

Inquiry as to
validity of
certain claims.
1898, 549, § 6.

1 SECTION 85. The court may, at any time upon written notice to
2 the opposite party or to his attorney of record, revise, modify or
3 suspend a decree made in any proceedings under the provisions of
4 the five preceding sections.

Revision of
decrees.
1898, 549, § 5.

1 SECTION 86. No costs shall be allowed to either party after pro-
2 ceedings have been commenced under the provisions of the six pre-
3 ceding sections, except that twenty-five cents shall be paid to the
4 clerk or justice who issues the notices therein provided, and the
5 same fees shall be paid to officers for copies, service, travel and
6 other expenses as are allowed by law in the service of writs, and
7 they shall be paid in the same manner.

Costs and fees.
1898, 549, § 7.

CHAPTER 169.

OF BAIL.

SECTIONS 1-8. — Taking Bail.

SECTIONS 9-17. — Surrender of Principal, etc.

SECTIONS 18-22. — Bail in Actions before Inferior Courts.

SECTIONS 23-25. — Support of Principal.

TAKING BAIL.

Defendant
arrested on
mesne process
may give bail,
etc.
1857, 141, § 22.
G. S. 125, § 1.
P. S. 163, § 1.
10 Gray, 490.

SECTION 1. A defendant arrested on mesne process shall be released upon giving bail. If he has been sentenced to imprisonment on a charge of fraud under the provisions of chapter one hundred and sixty-eight, the giving of such bail shall not discharge him from such imprisonment.

— how taken.
R. S. 91, § 1.
G. S. 125, § 2.
P. S. 163, § 2.
2 Mass. 481.
10 Mass. 20.
12 Mass. 434.
12 Met. 564.
4 Gray, 300.

SECTION 2. Bail in a civil action shall be taken by giving a bond to the sheriff, if the writ is served by him or his deputy, otherwise to the officer by whom the writ is served, conditioned that the defendant shall appear and answer to the plaintiff, abide the final judgment of the court and shall not avoid.

113 Mass. 325.

116 Mass. 133.

119 Mass. 146.

103 Mass. 390.
146 Mass. 58.

Officer may
require two
sureties, etc.
R. S. 91, § 2.
1850, 194, § 1.
1852, 211.
G. S. 125, § 3.
P. S. 163, § 3.
9 Mass. 479.

SECTION 3. An officer shall not be required to accept a bail bond unless with at least two sureties, each of them having sufficient property within this commonwealth; and he may examine on oath, to be administered by him, the persons offered as sureties, as to their sufficiency. If he takes a bail bond with only one surety, he shall be liable to the plaintiff for any loss sustained by the insufficiency of the bail, although the surety was actually sufficient when taken.

Bond may be
approved, etc.
Fee.
1857, 141, § 22.
G. S. 125, § 4.
1880, 132, § 1.
P. S. 163, § 4.

SECTION 4. The bond may be approved by a judge of a court of record, a master in chancery, trial justice or justice of the peace, and, when so approved, the sureties shall be sufficient. The fee of the magistrate shall be one dollar for the examination and decision.

— to bind
those who exe-
cute it.
R. S. 91, § 3.
G. S. 125, § 5.
P. S. 163, § 5.
2 Pick. 284.

SECTION 5. A bail bond shall bind the persons who execute it, although taken with one surety only, or with two or more sureties any of whom have not sufficient property within this commonwealth, or although not approved as aforesaid.

2 Met. 490.

— to be re-
turned with the
writ.
R. S. 91, § 4.
G. S. 125, § 6.
P. S. 163, § 6.
17 Mass. 692.

SECTION 6. The bond shall be returned and filed with the writ, and the clerk shall note on the writ that a bond is so filed. Upon an appeal, the bond shall be sent with the other papers to the court appealed to.

2 Met. 490.

9 Met. 564.

103 Mass. 398.

Obligations of
bail.
1693-4, 1.
1784, 10, § 1.
R. S. 91, § 5.
G. S. 125, § 7.
1881, 263, § 4.
P. S. 163, § 7.
2 Mass. 481.

SECTION 7. In case of the avoidance of the principal and a return on the execution that he has not been found, or a return on the notice mentioned in section nineteen of chapter one hundred and sixty-eight that after diligent search by the officer serving the notice the principal has not been found, his bail shall satisfy the judgment,

6 with interest thereon from the time it was rendered, unless he dis- 12 Mass. 433.
7 charges himself by surrendering the principal before final judgment 2 Met. 587, 590.
8 against him on the writ of scire facias, or by other sufficient defence 11 Cush. 15.
9 in that suit. 103 Mass. 398.
146 Mass. 331.

1 SECTION 8. The bail bond shall be so far a matter of record and Suit on bond.
2 of the nature of a recognizance that the court in which the judgment 1883-4, 1.
3 against the principal was rendered, upon application of the creditor 1784, 10, §§ 2, 3.
4 to the clerk thereof, shall issue a writ of scire facias thereon in the R. S. 91, §§ 6-8.
5 name of the creditor against the bail, which, without setting forth G. S. 125, §§ 8-
6 the bond, shall allege that the defendants became bail: but no 10.
7 action shall be maintained on the writ of scire facias unless it is P. S. 163, §§ 8-
8 served on the bail within one year after final judgment against the 10.
9 principal. 2 Mass. 484.
17 Mass. 602.
2 Pick. 283.
13 Pick. 339.
2 Met. 490, 587.
5 Gray, 397.
103 Mass. 399.
113 Mass. 325.

SURRENDER OF PRINCIPAL.

1 SECTION 9. The bail may surrender the principal in the court in Surrender of
2 which the scire facias is pending at any time before final judgment principal in
3 therein against them, and, upon payment of the costs on the scire court, etc.
4 facias to that time, they shall be discharged. 1883-4, 1.
G. S. 125, § 12. 1705-6, 7, § 1.
P. S. 163, § 12. 1784, 10, § 2.
1884, 260. R. S. 91, § 10.
7 Mass. 169. 117 Mass. 281. 161 Mass. 55.

1 SECTION 10. The principal so surrendered shall be committed to Commitment.
2 the jail for thirty days so that he may be taken on execution, unless 1705-6, 7, § 1.
3 he is discharged as provided in chapter one hundred and sixty-eight. 1784, 10, § 2.
R. S. 91, § 11.
G. S. 125, § 13.
P. S. 163, § 13.

1 SECTION 11. Upon proof of the death of the principal before Discharge by
2 final judgment on the scire facias, the bail shall be discharged, upon death of prin-
3 payment of the costs on the scire facias to the time when such proof cipal.
4 is made. 1884, 260.
138 Mass. 384.

1 SECTION 12. The bail may, at any time before final judgment Surrender out
2 against them on a writ of scire facias, exonerate themselves from of court.
3 further responsibility by surrendering their principal as provided 1817, 146.
4 in the four following sections. R. S. 91, § 12.
G. S. 125, § 14.
P. S. 163, § 14.

1 SECTION 13. Such surrender may be made to the jailer in the — to jailer.
2 county in which the principal was arrested or in that to which the 1817, 146.
3 original writ against the principal was returnable, who shall receive R. S. 91, §§ 13,
4 and hold him in like manner and with the same rights as if he had 18.
5 been committed on the original writ. G. S. 125, §§ 15,
20.
P. S. 163, §§ 15,
20.

1 SECTION 14. The jailer shall not be obliged to receive a person Proceedings.
2 so surrendered, unless the bail delivers to him a copy of the bail R. S. 91, § 14.
3 bond attested by the officer who took it or by the clerk in whose G. S. 125, § 16.
4 custody it may be, which shall be a sufficient warrant for the jailer. P. S. 163, § 16.

1 SECTION 15. The bail shall, within fourteen days after such sur- Same subject.
2 render, deliver to the jailer a copy of the original writ or process 1817, 146.
3 whereby the prisoner was arrested, with a copy of the return in- R. S. 91, §§ 15,
4 dorsed thereon, attested by the officer who served the writ or by the 16.
5 clerk into whose office it is returned, and they shall also within said G. S. 125, §§ 17,
6 time give notice in writing to the plaintiff or his attorney of the 18.
7 time when and the place where the prisoner was so committed. P. S. 163, §§ 17,
18.
8 Cush. 137.
11 Allen, 394.
121 Mass. 400.

Bail to pay costs on scire facias, when. 1817, 146.
R. S. 91, § 17.
G. S. 125, § 19.
P. S. 163, § 19.
11 Cush. 15.

SECTION 16. If the surrender is made after a writ of scire facias is issued against the bail, they shall, within fourteen days after the surrender, pay the costs of suit on the scire facias to the creditor or his attorney, or to the jailer for the use of the creditor; but if the writ of scire facias has not been served on the bail, they shall not be required to pay the costs thereon until twenty-four hours after he has notice of the issuing of the writ and a demand by the creditor for such payment.

Surrender on original action. 1784, 10, § 1.
R. S. 91, § 19.
G. S. 125, § 21.
P. S. 163, § 21.

SECTION 17. The provisions of the five preceding sections shall not impair the right of bail in all cases to surrender their principal in the court in which the original action is pending, before final judgment; or, after judgment, to surrender him to the officer holding the execution, at any time before the return thereof.

BAIL IN ACTIONS BEFORE INFERIOR COURTS.

Bail before inferior courts. 1803, 132, § 1.
R. S. 91, § 20.
G. S. 125, § 22.
P. S. 163, § 22.

SECTION 18. If bail is taken in an action before a police, district or municipal court or a trial justice, the magistrate may issue a scire facias against the bail, although the sum of the debt and costs on the original judgment exceeds the amount to which its or his jurisdiction is otherwise limited; and the rights and obligations of the bail and all proceedings as to the surrender of the principal and the action against the bail shall be substantially the same as are provided relative to bail when taken in actions in other courts.

Surrender of principal in such case. 1803, 132, §§ 2, 4.
R. S. 91, §§ 21, 22.
G. S. 125, §§ 23, 24.
P. S. 163, §§ 23, 24.

SECTION 19. When bail in an action before a police, district or municipal court or a trial justice surrender their principal in court, either during the pendency of the original action or of the scire facias, they shall secure the attendance of an officer qualified to serve legal process in the case to whom the principal may be committed. Any such officer who is seasonably notified and requested to attend for the purpose aforesaid shall attend and shall receive and take charge of the principal, if committed to his custody by the magistrate.

Proceedings upon surrender. R. S. 91, § 23.
G. S. 125, § 25.

SECTION 20. If the principal is surrendered in such action, an entry of such surrender shall be made on the record and he shall be forthwith committed to the officer in attendance. P. S. 163, § 25.

Same subject. R. S. 91, §§ 24, 25.
G. S. 125, § 26.
P. S. 163, § 26.

SECTION 21. If the principal is surrendered before final judgment in the original action, the bail shall deliver to the officer a copy of the original writ, with the return indorsed thereon, attested by the clerk of the court, if any, otherwise by the justice. If the surrender is after final judgment in the original action, the bail shall deliver to the officer a copy of the entry of the surrender, attested in like manner. The officer shall deliver the copy to the jailer upon committing the prisoner to his custody; and such copy shall be a sufficient warrant to the officer and to the jailer for receiving, committing and holding the prisoner.

Fees of officer. 1803, 132, § 4.
R. S. 91, § 26.
G. S. 125, § 27.
P. S. 163, § 27.

SECTION 22. The officer shall be allowed the same fees, which shall be paid by the bail, as upon the arrest and commitment of a defendant on mesne process.

SUPPORT OF PRINCIPAL.

1 SECTION 23. If a principal, surrendered by his bail and com-
2 mitted to jail, claims support as a pauper, the jailer may require the
3 plaintiff or his attorney in the action to give security or to advance
4 the money for the support of the defendant in like manner as if the
5 commitment had been made by an officer. If the plaintiff fails so
6 to do for twenty-four hours after being so required, the jailer may
7 discharge the defendant.

Liability of
plaintiff.
1824, 124.
R. S. 97, § 54.
G. S. 125, § 28.
P. S. 163, § 28.

1 SECTION 24. The jailer may, at the time of the surrender, demand
2 of the bail the advance of money for the support of the principal, or
3 security therefor, instead of demanding the same of the plaintiff;
4 and if the bail, for twenty-four hours after such demand, fail to give
5 such security or to advance the money for the support of the princi-
6 pal, the jailer may discharge him; and the bail and the principal shall
7 thereupon continue liable to the plaintiff in all respects as if the sur-
8 render had not been made.

— of bail.
1824, 124.
R. S. 97, § 55.
G. S. 125, § 29.
P. S. 163, § 29.

1 SECTION 25. If such demand is made upon the bail, they shall
2 be liable for the support of the principal for seven days after they
3 have given notice of the surrender to the plaintiff or to his attorney
4 in the action. The plaintiff shall be liable for the support of the
5 defendant after the expiration of said seven days; and if he fails to
6 advance the money or to give security therefor as before provided,
7 at or before the expiration of said time, the jailer may discharge the
8 defendant.

— after sur-
render.
1824, 124.
R. S. 97, §§ 56,
57.
G. S. 125, §§ 30,
31.
P. S. 163, §§ 30,
31.

CHAPTER 170.

OF PROCEEDINGS AGAINST ABSENT DEFENDANTS AND UPON INSUFFICIENT SERVICE.

1 SECTION 1. A personal action shall not be maintained against a
2 person who is not an inhabitant of this commonwealth unless he
3 has been served with process within this commonwealth or unless an
4 effectual attachment of his property within this commonwealth has
5 been made upon the original writ, and in case of such attachment
6 without such service, the judgment shall be valid to secure the
7 application of the property so attached to the satisfaction of the
8 judgment, and not otherwise.

170 Mass. 538.

176 Mass. 48.

Actions
against absent
defendants.
R. S. 90, § 44.
G. S. 126, § 1.
P. S. 164, § 1.
3 Cush. 578.
10 Cush. 183.
3 Gray, 508.
11 Allen, 134.
106 Mass. 220.
131 Mass. 359.
144 Mass. 10.
150 Mass. 555.

1 SECTION 2. If an action is brought by a person who is not an
2 inhabitant of this commonwealth or who cannot be found herein to
3 be served with process, he shall be held to answer to any action
4 brought against him here by the defendant in the former action, if
5 the demands are of such a nature that the judgment or execution in
6 the one case may be set off against the judgment or execution in the
7 other. If there are several defendants in the original action, each
8 of them may bring such cross action against the original plaintiff
9 and may be allowed to set off his judgment against that which may
10 be recovered against himself and his co-defendants in like manner
11 as if the latter judgment had been against himself alone.

Cross actions.
1823, 118.
R. S. 90, §§ 49,
50.
G. S. 126, §§ 2, 3.
P. S. 164, §§ 2, 3.
7 Mass. 140.
16 Mass. 478.
1 Met. 20.
170 Mass. 538.
175 Mass. 369.

Writ, how served.

R. S. 90, § 51.
G. S. 126, § 4.
P. S. 164, § 4.
168 Mass. 106.

SECTION 3. The writ in such cross action may be served on the person who appears as the attorney of the plaintiff in the original action, and such service shall be as valid and effectual as if made on the party himself in this commonwealth.

Proceedings.
R. S. 90, § 52;
92, § 16.
G. S. 126, § 5.
P. S. 164, § 5.

SECTION 4. The court in which either of the actions is pending may, from time to time, order continuances to enable the absent party to defend the action brought against him, and to enable either party to set off his judgment or execution against that which is recovered against him, but the actions shall not be unreasonably delayed by the neglect or default of either party. The provisions of the following sections, relative to actions against persons absent from the commonwealth, shall not apply to a cross action brought under the provisions of the two preceding sections.

Dismissal of action, when.
1884, 268.

SECTION 5. If real property of a non-resident is attached and no personal service is made upon the defendant, the action shall be dismissed unless notice thereof is given in such manner as the court orders within one year after the entry of the action.

Notice.
1828, 114.
R. S. 90, § 53;
92, § 3.
G. S. 126, § 6.
P. S. 164, § 6.
1894, 384.
3 Gray, 508.
4 Allen, 84.
5 Allen, 45.
11 Allen, 134.
138 Mass. 72.
144 Mass. 10.

SECTION 6. If a defendant is absent from the commonwealth or his residence is not known to the officer serving a writ, and no personal service has been made on him, or if the service of a writ is defective or insufficient by reason of a mistake of the plaintiff or officer as to where or with whom the summons or copy ought to have been left, the court, upon suggestion thereof by the plaintiff, shall order the action to be continued until notice of the action is given in such manner as it may order. But if the property of an absent defendant has been attached and the residence of such defendant is known to the plaintiff and no legal service can be made upon him within this commonwealth, except by publication, the court may order personal service to be made on him in such manner as it may order and, upon proof that service has been made as ordered, such defendant shall be held to answer to the action and no further service shall be necessary. If in any case the defendant does not appear, the court may in its discretion order the action to be continued and further notice given to him in such manner as it may order.

Default.
1828, 114.

R. S. 92, § 3.
G. S. 126, § 7.
P. S. 164, § 7.
1885, 384, § 8.
144 Mass. 10.

SECTION 7. If, after such notice, the defendant does not appear within ten days after the day specified therein for his appearance, a default shall be entered and judgment thereon may be rendered against him as provided in section one.

Bond.
1700-1, 20, § 3.
1797, 50, § 5.
R. S. 92, §§ 6, 7.
G. S. 126, §§ 8, 9.
P. S. 164, §§ 8, 9.
4 Mass. 483.
19 Pick, 64.
13 Gray, 1.
131 Mass. 362.
138 Mass. 72.

SECTION 8. If judgment in a personal action is rendered as provided in the preceding section upon the default of a defendant who is absent from the commonwealth or whose residence is unknown, the plaintiff shall not take out execution thereon within one year thereafter, unless he files with the clerk of the court a bond payable to the defendant with one or more sureties, approved by the clerk or, upon appeal from his decision as to the sufficiency of the sureties, by a justice of the court rendering the judgment, in a sum equal to double the amount recovered, conditioned to repay the

10 amount so recovered if the judgment is reversed, or so much of
 11 the amount as shall be recovered back upon a review brought by
 12 the original defendant within one year after the original judgment.

1 SECTION 9. If an attachment has been made upon a writ return-
 2 able to a police, district or municipal court or trial justice and the
 3 defendant is absent from the commonwealth, so that no service can
 4 be made on him and he has no agent or attorney residing in this
 5 commonwealth, the court or justice may order the action to be
 6 continued until notice thereof is given to the defendant in such
 7 manner as it or he may order. If, upon proof that such notice has
 8 been given, the defendant fails to appear on the return day of such
 9 notice, judgment may be entered and execution issued for the plain-
 10 tiff, upon his giving bond to the defendant with sufficient surety in
 11 double the sum for which execution is to be issued, conditioned to
 12 repay the amount recovered, if, within one year from the rendition
 13 of the judgment, proceedings are begun upon which said judgment
 14 is reversed.

Notice in
 inferior courts.
 1838, 121, § 2.
 G. S. 120, § 8.
 P. S. 154, § 11;
 155, § 19.
 1833, 306, § 18.
 1894, 431.
 4 Allen, 94.
 138 Mass. 72.

1 SECTION 10. If the execution in an action under the provisions
 2 of this chapter, except as otherwise provided, is levied on land, no
 3 alienation thereof by the original plaintiff shall prevent the defend-
 4 ant from retaking the same or as much thereof as may be necessary
 5 to satisfy the judgment which he recovers on review, if the writ
 6 of review is sued out within one year after the original judgment.

Execution
 levied on land.
 1700-1, 20, § 3.
 1797, 50, § 5.
 R. S. 92, § 8.
 G. S. 126, § 10.
 P. S. 164, § 10.

1 SECTION 11. If the original judgment was for seisin of the land
 2 demanded in a real action, the writ of seisin may be issued in
 3 favor of the demandant without his giving bond; and if the judg-
 4 ment is reversed in whole or in part upon a review, whether sued
 5 out within the year or afterward, the original tenant may have resti-
 6 tution of the land as upon a reversal on a writ of error.

Judgment in
 real action.
 R. S. 92, § 9.
 G. S. 126, § 11.
 P. S. 164, § 11.

1 SECTION 12. An action of tort against several defendants, any
 2 one of whom is absent from the commonwealth at the time of the
 3 service of the writ, shall be conducted with regard to him relative
 4 to the service of the writ, judgment, review thereof and execution in
 5 like manner as if he were the sole defendant.

Actions of tort.
 1797, 50.
 R. S. 92, § 10.
 G. S. 126, § 12.
 P. S. 164, § 12.

1 SECTION 13. An action of contract against several defendants,
 2 any one of whom is in the commonwealth and any other of whom
 3 is absent, in which the plaintiff recovers judgment shall not be sub-
 4 ject to the provisions of this chapter relative to review, giving bond
 5 and alienation of land; but judgment shall not be rendered against
 6 any such absent defendant, unless under such circumstances as
 7 would entitle the plaintiff to judgment if the absent party were the
 8 sole defendant.

— of contract.
 1797, 50.
 R. S. 92, § 11.
 G. S. 126, § 13.
 P. S. 164, § 13.
 16 Gray, 114.

1 SECTION 14. An action of contract against several defendants
 2 in which legal service is not made upon all, either by attachment or
 3 otherwise, by reason of their absence from the commonwealth or
 4 for other sufficient cause, may be prosecuted against those who are

Prosecution
 against those
 served.
 New action.
 R. S. 92, §§ 12,
 13.

G. S. 126, §§ 14, 15.	duly served with process, without further proceedings against the	5
P. S. 164, §§ 14, 15.	others. If judgment so rendered against one or more of several	6
5 Mass. 193.	joint contractors remains unsatisfied, an action on the same contract	7
8 Mass. 423.	may be maintained against any of the other joint contractors in like	8
13 Mass. 148.	manner as if the contract had been joint and several.	9
13 Met. 251.		
16 Gray, 114.		

10 Allen, 490.

147 Mass. 201.

Absence of one of several tenants, etc.	SECTION 15. Real actions against several tenants, any one of	1
R. S. 92, § 14.	whom is absent from the commonwealth, shall be conducted relative	2
G. S. 126, § 16.	to him as if he were the sole defendant.	3

P. S. 164, § 16.

Mixed actions.	SECTION 16. The provisions of this chapter relative to judg-	1
R. S. 92, § 14.	ment, bond and review in actions of tort shall apply to a mixed	2
G. S. 126, § 17.	action if the defendant or one of several defendants is absent from	3
P. S. 164, § 17.	the commonwealth, but, with regard to the service of the writ and	4
	notice to the defendant, it shall be conducted as a real action.	5

CHAPTER 171.

OF THE SURVIVAL OF ACTIONS AND OF THE DEATH AND DISABILITIES OF PARTIES.

SECTIONS	1, 2.—Survival of Actions.
SECTIONS	3-8.—Personal Actions.
SECTIONS	9-12.—Real and Mixed Actions.
SECTIONS	13-15.—Petitions for Partition.
SECTION	16.—Applications for a Jury.
SECTION	17.—Suits in Equity.
SECTION	18.—Insanity.
SECTION	19.—Death or Removal of a Public Officer.

SURVIVAL OF ACTIONS.

Actions which survive.	SECTION 1. In addition to the actions which survive by the com-	1
1805, 99, § 2.	mon law, the following shall also survive: actions of replevin, tort	2
1822, 110, § 1.	for assault, battery, imprisonment or other damage to the person,	3
1828, 112.	for goods taken and carried away or converted, or for damage to real	4
1834, 2.	or personal property, and actions against sheriffs for the misconduct	5
R. S. 14, § 66;	or negligence of themselves or their deputies.	6
93, § 7.		
1842, 80, § 1.		
G. S. 17, § 58;		
127, § 1.		

P. S. 25, § 10; 165, § 1.

106 Mass. 145.

123 Mass. 254.

143 Mass. 280, 301.

1 Pick. 71.

115 Mass. 346, 552.

125 Mass. 166.

147 Mass. 471.

4 Cush. 408.

121 Mass. 550.

132 Mass. 359.

173 Mass. 212.

Action for causing death.
1897, 416.
1898, 566.
11 Allen, 34.
155 Mass. 176.

SECTION 2. If a person or corporation by his or its negligence,	1
or by the gross negligence of his or its agents or servants while en-	2
gaged in his or its business, causes the death of a person who is in	3
the exercise of due care and not in his or its employment or service,	4
he or it shall be liable in damages in the sum of not less than five	5
hundred nor more than five thousand dollars to be assessed with	6
reference to the degree of his or its culpability or of that of his	7
or its agents or servants, to be recovered in an action of tort, com-	8
menced within one year after the injury which caused the death, by	9
the executor or administrator of the deceased, one-half thereof to	10
the use of the widow and one-half to the use of the children of the	11

12 deceased; or, if there are no children, the whole to the use of the
 13 widow; or, if there is no widow, the whole to the use of the next
 14 of kin.

PERSONAL ACTIONS.

1 SECTION 3. An action of replevin or tort by or against an offi-
 2 cer for personal property attached by him and claimed or taken by
 3 another person shall not be abated by the death of either party, but
 4 may be prosecuted by or against the executor or administrator of the
 5 deceased.

Death of
officer not to
abate action.
R. S. 90, § 96.
G. S. 127, § 2.
P. S. 165, § 2.

1 SECTION 4. If judgment in such case is rendered for the execu-
 2 tor or administrator of the officer, the property or money recovered
 3 shall be disposed of in the same manner as it ought to have been by
 4 the officer if he had recovered the same; but if judgment is rendered
 5 against such executor or administrator, the property shall be re-
 6 turned or delivered or the damages recovered shall be paid in full
 7 by him, if there is sufficient property therefor, although the estate
 8 of the deceased is insolvent.

Judgment for
and against
executor, etc.
R. S. 90, §§ 97,
98.
G. S. 127, §§ 3, 4.
P. S. 165, §§ 3, 4.

1 SECTION 5. If the sole plaintiff or defendant in a personal action,
 2 the cause of which survives, dies before the entry thereof or of an
 3 appeal from a judgment rendered therein, the action or appeal may
 4 be entered and his death suggested upon the record. After the
 5 entry of such action or appeal and of the suggestion of his death
 6 as aforesaid, his executor or administrator may, within such time
 7 as the court or trial justice allows, appear and prosecute or defend
 8 in the same manner as if the action had been commenced by or
 9 against him. If he does not voluntarily appear the court or trial
 10 justice before whom the action is pending shall, upon motion of the
 11 surviving party, cite him to appear and prosecute or defend it.

Death of sole
plaintiff or
defendant.
1727, 6, §§ 1, 2.
1727-8, 12, § 1.
1783, 32, § 10;
59, § 1.
1834, 86.
R. S. 93, §§ 1-3.
G. S. 127, §§ 5-7.
P. S. 165, §§ 5-7.
133 Mass. 409.

1 SECTION 6. Such citation shall be returnable at such time as the
 2 court or trial justice may order and shall be served fourteen days
 3 at least before the return day; but it shall not issue after the ex-
 4 piration of two years from the time such executor or administrator
 5 has given bond, if he has given the notice of his appointment as re-
 6 quired by law.

Citation.
1783, 59, § 1.
R. S. 93, § 4.
G. S. 127, § 8.
1878, 200.
P. S. 165, §§ 8, 9.
13 Allen, 221.

1 SECTION 7. If the executor or administrator does not appear on
 2 the return of the citation or within such further time as the court or
 3 trial justice allows, he shall be nonsuited or defaulted and judg-
 4 ment rendered against him in like manner as if the action had been
 5 commenced by or against him in his said capacity, except that he
 6 shall not be personally liable for costs; but the estate of the deceased
 7 in his hands shall be liable for the costs, as well as for the debt or
 8 damages recovered.

Nonsuit or
default.
1727, 6, § 3.
1727-8, 12, § 1.
1783, 59, §§ 1, 3.
R. S. 93, §§ 5, 6.
G. S. 127, §§ 9,
10.
P. S. 165, §§ 10,
11.
136 Mass. 251.

1 SECTION 8. If any of several plaintiffs or defendants in a per-
 2 sonal action, the cause of which survives, dies before final judgment,
 3 the action may be prosecuted by the surviving plaintiff or against
 4 the surviving defendant, as the case may be. If all the plaintiffs or

Death of joint
plaintiff, etc.
R. S. 93, §§ 12,
13.
G. S. 127, §§ 11,
12.

P. S. 165, §§ 12, 13.	defendants die, the action may be prosecuted or defended by or	5
4 Pick. 308.	against the executor or administrator of the last surviving plaintiff	6
7 Pick. 62.	or defendant, respectively.	7
9 Pick. 527.	133 Mass. 409.	166 Mass. 476.
119 Mass. 361.		168 Mass. 415.

REAL AND MIXED ACTIONS.

Prosecution of real and mixed actions by devisee or heir.	SECTION 9. If, in a real or mixed action, the demandant dies before final judgment, his heir or devisee of the land demanded or of the right of action may, within such time as the court allows, appear and prosecute the action in the same manner as if commenced by him. If the first estate in possession under a devise is not a fee simple, the devisee of the first freehold estate in possession may appear and prosecute, and the judgment, if in his favor, shall be conformed to his title.	1 2 3 4 5 6 7 8
1826, 70, § 1.		
R. S. 93, § 14.		
1851, 233, § 72.		
1852, 312, § 55.		
G. S. 127, § 13.		
P. S. 165, § 14.		
17 Pick. 103.		
10 Met. 294.		
1 Cush. 395.		
	8 Gray, 154.	12 Gray, 317.
		13 Gray, 272.
		152 Mass. 257.

— jointly with survivors.	SECTION 10. If any of several demandants dies before final judgment, his heir or devisee shall be admitted, upon motion, to prosecute the action jointly with the survivors, in the same manner as if he had been originally a party thereto.	1 2 3 4
1826, 70, § 1.		
R. S. 93, § 15.		
G. S. 127, § 14.		
P. S. 165, § 15.		
10 Mass. 180.		
		11 Mass. 56.
		155 Mass. 461.

— by survivor alone.	SECTION 11. If the interest of the deceased party passes to the surviving demandants, or if there is no motion for the admission of an heir or devisee at the sitting when the death of the deceased party is suggested or within such further time as the court allows, the surviving demandants may prosecute the action for so much of the land in question as may then be claimed by them.	1 2 3 4 5 6
1826, 70, § 1.		
R. S. 93, § 16.		
G. S. 127, § 15.		
P. S. 165, § 16.		

Death of tenant.	SECTION 12. If the tenant dies before final judgment, his heir or devisee of the land demanded may, within such time as the court allows, appear and defend the action, which shall be conducted in the same manner as if commenced against him. If the heir or devisee does not voluntarily appear, the court before whom the action is pending shall, upon the application of the demandant, cite such heir or devisee to appear and defend the action. If any of several tenants in such action dies before final judgment, the action may be prosecuted against the surviving tenants for so much of the land as they hold or claim.	1 2 3 4 5 6 7 8 9 10
1826, 70, § 2.		
R. S. 93, § 17.		
1855, 364.		
G. S. 127, §§ 16, 17.		
P. S. 165, §§ 17, 18.		
2 Mass. 479.		
2 Pick. 23.		
19 Pick. 243.		

PETITIONS FOR PARTITION.

Actions for partition.	SECTION 13. The provisions of the four preceding sections shall apply to petitions for partition of land, in case of the death of any of the parties, except as provided in the two following sections.	1 2 3
1822, 71.		
1826, 70, § 3.		
R. S. 93, § 18.		
G. S. 127, § 18.		
	P. S. 165, § 20.	2 Mass. 479.
		10 Mass. 5.
		136 Mass. 126.

Exception.	SECTION 14. If upon the death of one of several such petitioners his interest passes to the surviving petitioners or to any person admitted to join them in the petition, it shall be prosecuted in the manner provided relative to a real action; but if the interest of the deceased party passes to a person not so admitted, such person may, by order of the court, be made a respondent, and the same proceedings may be had against him as would have been necessary to make him an original respondent.	1 2 3 4 5 6 7 8
R. S. 93, § 19.		
G. S. 127, § 19.		
P. S. 165, § 21.		

1 SECTION 15. If, upon the death of any of several respondents, Further excep-
 2 his interest passes to the surviving respondents, the action may tions.
 3 proceed against them without any new process; but if his interest R. S. 93, § 20.
 4 passes to any other person, such person may be made a respondent G. S. 127, § 20.
 5 in the manner provided in the preceding section. P. S. 165, § 22.

APPLICATIONS FOR A JURY.

1 SECTION 16. If a person who is entitled to petition the superior Death of per-
 2 court or the county commissioners for a jury, either to assess dam- son entitled
 3 ages or to hear and determine any other matter, dies without filing to jury, etc.
 4 such petition within the time limited therefor, his executor, admin- 1859, 228.
 5 istrator, heir or devisee, if interested, may, within one year after G. S. 127, § 21.
 6 his interest vests, file such petition in the same manner and with the P. S. 165, § 23.
 7 same effect as if filed by the deceased in his lifetime. 139 Mass. 172.

SUITS IN EQUITY.

1 SECTION 17. If a party to a suit in equity dies and the cause by —of party
 2 the rules of equity may be revived against or in favor of an executor, to suit.
 3 administrator, heir, devisee or other person, such representative 1863, 42.
 4 may, in lieu of proceedings to revive the same, appear or be sum- P. S. 165, § 19.
 5 moned to prosecute or defend in like manner as in an action at law. 12 Gray, 288.
 125 Mass. 166.
 166 Mass. 547.

INSANITY.

1 SECTION 18. If, during the pendency of an action or suit, either Insanity.
 2 party becomes insane, it may be prosecuted or defended by his guar- R. S. 93, § 22.
 3 dian in like manner as if it had been commenced after the appoint- G. S. 127, § 23.
 4 ment of the guardian, or the court may appoint a guardian for the P. S. 165, § 25.
 5 action, as the case may require. 13 Mass. 412.
 5 Pick. 431.
 8 Allen, 311.

DEATH OR REMOVAL OF A PUBLIC OFFICER.

1 SECTION 19. An action on a note, bond, contract or other Death or re-
 2 liability made to or with the treasurer and receiver general, or of a moval of a
 3 county, city, town, parish or other corporation, or to or with any public officer,
 4 other public officer or trustee appointed under a statute, may, after etc.
 5 his removal, resignation or death, be commenced or, if before com- 1797, 14.
 6 menced, may be prosecuted by his successor, as it might have been R. S. 13, § 24.
 7 by the person with whom the contract was made. 93, § 23; 160, § 25.
 6 Cnsh. 230. G. S. 127, § 24.
 P. S. 165, § 26.
 2 Mass. 440.
 12 Mass. 375.
 2 Met. 47.

CHAPTER 172.

OF ACTIONS BY AND AGAINST EXECUTORS AND ADMINISTRATORS.

1 SECTION 1. An action which would have survived if commenced Actions
 2 by or against the original party in his lifetime may be commenced against execu-
 3 and prosecuted by or against his executor or administrator. tor, etc.
 R. S. 93, § 8.
 G. S. 128, § 1.
 P. S. 166, § 1.

1 SECTION 2. If an action of tort is commenced or prosecuted Damages in
 2 against the executor or administrator of the person originally liable, tort.
 R. S. 93, § 9.

G. S. 128, § 2.
P. S. 166, § 2.
4 Pick. 218.
173 Mass. 212.

the plaintiff shall recover only for the value of the goods taken, or for the damage actually sustained, without vindictive or exemplary damages, or damages for any alleged outrage to the feelings of the injured party.

Recovery by
executor, etc.,
in right of
another.
1822, 110, § 2.
R. S. 93, § 10.
G. S. 128, § 3.
P. S. 166, § 3.

SECTION 3. If the executor or administrator of a trustee, carrier, depositary or other person who claimed only a special property in goods which he held for the use and benefit of another recovers such goods, or damages for the taking or detention thereof, in an action of replevin or tort, the goods or money recovered shall not be assets in his hands, but shall, after the deduction of the costs and expenses of the action, be paid over and delivered to the person for whose use and benefit they were so held or claimed by the deceased.

Property
returned on
replevin by
executor, etc.
1822, 110, § 3.
R. S. 93, § 11.
G. S. 128, § 4.
P. S. 166, § 4.

SECTION 4. If judgment for a return in an action of replevin is rendered against an executor or administrator, the property returned by him shall not be assets in his hands; and if it has been included in the inventory, the executor or administrator shall be allowed therefor in his account if he shows that it has been returned in pursuance of such judgment.

Writs against
executors, etc.
1703-4, 12, § 4.
1783, 32, § 9.
R. S. 110, § 1.
G. S. 128, § 5.
P. S. 166, § 5.

SECTION 5. Writs of attachment and executions against executors or administrators for debts due from the testator or intestate shall run only against the goods and estate of the deceased in their hands, and not against their bodies, goods or estate.

3 Mass. 193.

140 Mass. 66.

151 Mass. 503.

Costs.
R. S. 110, §§ 2,
3, 5.
G. S. 128, §§ 6,
7, 9.
P. S. 166, §§ 6,
7, 9.
16 Mass. 530.
136 Mass. 249,
294.

SECTION 6. If a judgment for costs is rendered against an executor or administrator in an action commenced by or against him, or in an action commenced by or against the testator or intestate, wherein the executor or administrator has appeared and taken upon himself the prosecution or defence, he shall be personally liable for the costs, and the execution shall be awarded against his body, goods and estate, as if it were for his own debt. Costs paid by him shall be allowed in his account unless the probate court determines that the action was prosecuted or defended without reasonable cause.

Two execu-
tions.
R. S. 110, § 4.
G. S. 128, § 8.
P. S. 166, § 8.
120 Mass. 516
136 Mass. 249,
294.
143 Mass. 187.

SECTION 7. If the judgment is for debt or damages and costs, an execution for the debt or damages shall be awarded against the goods and estate of the deceased in the hands of the executor or administrator, and another execution for the costs against the goods, estate and body of the executor or administrator, as if it were for his own debt.

Scire facias
against execu-
tor, etc.
1703-4, 12, § 4.
1783, 32, § 9.
1819, 157.
R. S. 110, § 6.
G. S. 128, § 10.
P. S. 166, § 10.
140 Mass. 66.
142 Mass. 229.
144 Mass. 235.

SECTION 8. Upon the return unsatisfied of an execution against an executor or administrator for a debt due from the estate of the deceased, the court may, upon a suggestion by the creditor of waste, issue a writ of scire facias against the executor or administrator. If the defendant does not appear and show sufficient cause to the contrary, he shall be found guilty of waste and shall be personally liable for the amount thereof, if it can be ascertained, otherwise for the amount due on the original judgment, with interest from the

9 time when it was rendered; and judgment and execution shall be
10 awarded as for his own debt.

1 SECTION 9. If an executor or administrator dies or is removed
2 from office during the pendency of an action to which he is a party,
3 it may be prosecuted by or against the administrator de bonis non
4 in like manner as if commenced by or against him: and the pro-
5 visions of the preceding chapter relative to the appearance or cita-
6 tion of an administrator and relative to a nonsuit or default shall
7 apply to such administrator de bonis non. 7 Allen, 427.

Death of execu-
tor, etc.,
pending
action.
1812, 105, § 1.
1817, 190, § 18.
R. S. 110, §§ 7, 8.
G. S. 128, §§ 11,
12.
P. S. 166, §§ 11,
12.
4 Mass. 611.

1 SECTION 10. If an executor or administrator dies or is removed
2 after judgment has been rendered for or against him, the court may
3 issue a writ of scire facias in favor of or against the administrator de
4 bonis non, and a new execution may be issued in like manner as
5 may be done in favor of or against an original executor or adminis-
6 trator, in case of the death of his testator or intestate after a judg-
7 ment rendered for or against him; except that a judgment against
8 the first executor or administrator for costs for which he was person-
9 ally liable shall be enforced only against his executor or administra-
10 tor and not against the administrator de bonis non.

— after judg-
ment.
1812, 105, § 2.
1817, 190, § 18.
R. S. 110, § 9.
G. S. 128, § 13.
P. S. 166, § 13.

1 SECTION 11. If a judgment is rendered for or against an execu-
2 tor or administrator, a writ of error may be brought thereon by or
3 against an administrator de bonis non in like manner as it might
4 have been brought by or against the executor or administrator who
5 was party to the judgment.

Writ of error.
1812, 105, § 2.
1817, 190, § 18.
R. S. 110, § 10.
G. S. 128, § 14.
P. S. 166, § 14.
4 Mass. 611.
7 Allen, 427.

CHAPTER 173.

OF PLEADING AND PRACTICE.

SECTIONS 1-38. — Pleading.

SECTIONS 39-130. — Practice.

[* applies to civil actions before trial justices. See § 127.

† applies to civil actions before any police, district or municipal court. See § 126.

‡ applies to civil actions before any police, district or municipal court and before trial justices.
See § 125.

§ applies to real and mixed actions. See § 124.

|| applies to the municipal court of the city of Boston. See § 128.]

PLEADING.

Division of Personal Actions.

1 † SECTION 1. There shall be only three divisions of personal
2 actions: —
3 First, Contract, which shall include actions formerly known as
4 assumpsit, covenant and debt, except actions for penalties.
5 Second, Tort, which shall include actions formerly known as
6 trespass, trespass on the case, trover and actions for penalties.
7 Third, Replevin.

Divisions of
actions.
1851, 233, § 1.
1852, 312, § 1.
G. S. 129, § 1.
P. S. 167, § 1.
12 Gray, 206.
4 Allen, 579.
110 Mass. 343.
140 Mass. 508.
144 Mass. 61.
177 Mass. 562.

Parties.

Joinder of
plaintiffs in
several actions.
1896, 444.

‡ SECTION 2. In actions of contract for the recovery of money due for manual labor, two or more persons may join in one action against the same defendant, although such claims are not joint, if the claim of no one of such plaintiffs exceeds twenty dollars; and each plaintiff so joining may recover the amount which is found to be due to him solely. The claim of each plaintiff shall be stated in a separate count, and the court may make such order for the trial of the issues as may be most convenient, may enter separate judgments, issue one or more executions and make such order relative to costs as the case requires.

— of defendants severally liable on written contracts.
1851, 233, § 3.
1852, 312, § 3.
G. S. 129, § 4.
P. S. 167, § 4.
16 Gray, 473.
13 Allen, 19, 217.
118 Mass. 380.
119 Mass. 361.
133 Mass. 409.
160 Mass. 418.
166 Mass. 37.

‡ SECTION 3. All or any of the persons who are severally liable upon contracts in writing, including bills of exchange and promissory notes, may be joined in one action. The declaration may contain one count only, describing the several contracts, if the same contract was made by all; or different counts, describing the different contracts, if, as in the case of maker and indorser, the same contract was not made by all. The court shall make such order for the separate trial of the issues as may be convenient, and shall enter several judgments according to the several contracts and issue one or more executions.

Action by
assignee of
chase in action.
1897, 402.

‡ SECTION 4. The assignee of a non-negotiable legal chose in action which has been assigned in writing may maintain an action thereon in his own name, but subject to all defences and rights of counter-claim, recoupment or set-off to which the defendant would have been entitled had the action been brought in the name of the assignor.

Same subject.
1878, 158.
P. S. 133, § 5.

‡ SECTION 5. An action for the recovery of an outstanding debt or claim which has been sold or assigned by an executor or administrator under a license of the probate court to sell or assign any outstanding debts or claims shall be brought in the name of the purchaser or assignee. The fact of the sale shall be set forth in the writ or declaration, and the defendant may avail himself of any defence which would have been open to him upon an action brought by the executor or administrator. Costs shall be recovered by or against the plaintiff, but not against the executor or administrator. Such action, if brought upon a promissory note signed in the presence of an attesting witness, shall not be barred by the provisions of chapter two hundred and two, if the action could have been maintained by the executor or administrator.

Declarations.

Form of declaring at law.
1851, 233, § 2.
1852, 312, § 2.
G. S. 129, § 2.
P. S. 167, § 2.

‡ SECTION 6. A declaration in a personal action shall conform to the following requirements:—
First, It shall state to which division of actions specified in section one the action belongs.

Substantive facts required.
4 Gray, 446.
8 Gray, 589.

Second, It shall state concisely and with substantial certainty the substantive facts necessary to constitute the cause of action.

10 Gray, 361.
15 Gray, 249.
1 Allen, 521.

6 Allen, 410.
8 Allen, 309.
9 Allen, 358.

10 Allen, 326.
102 Mass. 58.
121 Mass. 346.

123 Mass. 583.
153 Mass. 380.

- 7 Third, It need not aver a fact which is not required by law to
 8 be proved. 117 Mass. 195. 137 Mass. 119. 105 Mass. 71.
 112 Mass. 237.
- 9 Fourth, It need not contain more than one count for each cause
 10 of action; but any number of breaches may be assigned in each
 11 count and, if the nature of the case requires it, breaches may be
 12 assigned in the alternative. Two causes of action which arise on
 13 different contracts shall not be embraced in one count except in the
 14 count on an account annexed. One count for
 each cause, but
 any number of
 breaches.
 9 Allen, 557.
 128 Mass. 104.
 134 Mass. 303.
 160 Mass. 201.
- 15 Fifth, It may contain any number of counts for different causes
 16 of action which belong to the same division of actions. Joinder of
 counts.
 152 Mass. 133.
- 17 Sixth, Actions of contract and actions of tort shall not be
 18 joined; but if it is doubtful to which division a cause of action
 19 belongs, a count in contract may be joined with a count in tort,
 20 with an averment that both are for one and the same cause of action. — of causes of
 action.
 7 Gray, 562.
 97 Mass. 20.
 102 Mass. 439.
 107 Mass. 369.
- 124 Mass. 50. 125 Mass. 477. 142 Mass. 129.
- 21 Seventh, The common counts shall not be used unitedly, but
 22 any one of them may be used if the natural import of its terms
 23 correctly describes the cause of action. Common
 counts.
 7 Gray, 187.
 15 Gray, 293.
- 24 Eighth, A count on an account annexed may be used in an
 25 action of contract if one or more items are claimed any of which
 26 would be correctly described by any one of the common counts
 27 according to the natural import of its terms. Account
 annexed.
 7 Gray, 187, 190.
 11 Allen, 123.
 99 Mass. 1.
- 106 Mass. 430. 111 Mass. 390. 127 Mass. 546.
- 28 Ninth, Interest accruing as damages for the detention of money
 29 or otherwise may be declared on, in addition to other forms of
 30 pleading authorized by law, by including in any count which is fol-
 31 lowed by an account annexed or bill of particulars the words
 32 "and interest", and by stating in the account annexed or bill of
 33 particulars the time and amount for and upon which interest is
 34 claimed and the amount of interest so claimed. Interest.
 1890, 398.
- 35 Tenth, Written instruments, except policies of insurance, shall
 36 be declared on by setting out a copy or such part as is relied on,
 37 or the legal effect thereof, with proper averments to describe the
 38 cause of action. If the whole contract is not set out, a copy or
 39 the original, as the court may direct, shall be filed upon motion
 40 of the defendant. If it is necessary and the court so orders,
 41 the copy so filed shall be part of the record as if oyer had been
 42 granted of a deed declared on according to the common law. Written instru-
 ments, how
 declared on.
 1 Gray, 328.
 4 Gray, 455.
 11 Gray, 10.
 14 Gray, 129.
 16 Gray, 386.
 8 Allen, 355.
 12 Allen, 396.
 103 Mass. 44.
 138 Mass. 151.
- 43 No profert or excuse therefor need be inserted in a declaration.
 44 If the instrument relied on is lost or destroyed, or if it is not
 45 within the control of the party who relies on it, the substance
 46 thereof, as nearly as may be, and the reason why a copy is not
 47 given shall be stated.
- 48 Eleventh, The condition of a bond or other conditional obliga-
 49 tion, contract or grant which is declared on shall be set forth. The
 50 breaches relied on shall be assigned, and the performance of con-
 51 ditions precedent to the right of the plaintiff to maintain his ac-
 52 tion shall be averred or his reason for the non-performance thereof
 53 stated. Bonds, etc.
 171 Mass. 352.
- 1 § SECTION 7. Declarations in real actions which are founded on
 2 mortgage titles shall allege the seisin to be "in mortgage." In real actions
 on mortgage.
 1851, 233, § 2.
- 1852, 312, § 2. P. S. 167, § 3. 103 Mass. 479.
 G. S. 129, § 3. 14 Gray, 169. 131 Mass. 179.

Description of
plaintiff's close
in tort, etc.
1839, 151, § 3.
G. S. 129, § 6.
P. S. 167, § 6.

‡ SECTION 8. In actions of tort for breaking and entering the plaintiff's close, the place of the alleged trespass shall be designated in the declaration by name, boundaries or other sufficient description. 1 2 3

13 Met. 109.

97 Mass. 419.

152 Mass. 532.

157 Mass. 474.

Declaration
need not be in
writ, unless,
etc.

1851, 233, § 7.
1852, 312, § 7.
G. S. 129, § 7.
1862, 20, §§ 1, 3.
P. S. 167, § 7.
1 Allen, 273.
9 Allen, 257.

‡ SECTION 9. In actions of contract or tort, unless an arrest of the person is made or except as provided in section thirty-nine of chapter one hundred and sixty-seven, the writ need not contain a declaration nor any description of the cause of action in which it is intended to declare except the name of the division thereof; but if in such actions in police, district or municipal courts or before trial justices the declaration is not inserted before the service of the writ, the defendant shall, upon motion, be entitled as of right to a continuance for at least seven days after the return day. 1 2 3 4 5 6 7 8 9

— to be filed
first day of
court.

1851, 233, § 8.
1852, 312, § 8.
1854, 440, § 1.
G. S. 129, § 8.
1862, 20, § 2.
P. S. 167, § 8.
1894, 405.
7 Gray, 409.
167 Mass. 472.

‡ § SECTION 10. The declaration, unless it has been inserted in the writ, may be filed in the clerk's office, or in the office of the justice of a police or district court which has no clerk, on or before the return day of the writ, or it may be filed with a trial justice at the time and place at which the writ is returnable. If, in an action in which there has been an attachment of property, the declaration and bill of particulars, when such bill is necessary, have not been inserted in the writ, a copy thereof shall be furnished to the defendant or his attorney within three days after a demand in writing therefor upon the plaintiff or his attorney. 1 2 3 4 5 6 7 8 9 10

Non-entry and
late entry.

1897, 8, § 1.
1727-8, 10, § 2.
1732-3, 6, § 2.
1733-9, 4, § 2.
1742-3, 13, § 2.
1783, 42, § 1.
R. S. 85, § 10.
1851, 233, § 13.
1852, 312, § 9.
1854, 440, § 1.
G. S. 129, § 12;
129, § 9.
P. S. 155, § 23;
167, § 9.

‡ § SECTION 11. If the plaintiff fails to enter his writ, or if he fails either to insert a declaration in the writ or to file it in the clerk's office on or before the return day of the writ, or if he fails to furnish to the defendant a copy thereof pursuant to the provisions of the preceding section, the action may at any time, upon motion of the defendant, be dismissed with costs; but courts, excluding trial justices, may upon terms allow the plaintiff, at any time before the next regular return day, to enter his writ and to file his declaration. 1 2 3 4 5 6 7 8

1885, 384, § 6.

1 Gray, 446.

110 Mass. 56.

153 Mass. 104.

1893, 396, § 19.

9 Allen, 257.

123 Mass. 318.

160 Mass. 24.

1894, 405.

11 Allen, 527.

136 Mass. 423.

167 Mass. 472.

Bill of particu-
lars.

1851, 233, § 4.
1852, 312, § 4.
G. S. 129, § 10.
P. S. 167, § 10.
12 Gray, 222.

‡ SECTION 12. If one of the common counts is used, the plaintiff shall file a bill of particulars with his writ when it is entered. The items in such bill shall be numbered consecutively, and the bill shall be a part of the declaration and be answered as such. 1 2 3 4

1 Allen, 273.

100 Mass. 152.

105 Mass. 21.

Demurrers.

Demurrers.

1851, 233, § 30.
1852, 312, § 20.
G. S. 129, § 24.
P. S. 167, § 25.
138 Mass. 441.

‡ SECTION 13. Either party may demur to the pleadings of the adverse party, but no mere defects of form in the declaration or in the subsequent pleadings shall be assigned as causes for demurrer. If the adverse party does not amend the pleadings demurred to, he shall be held to have joined in demurrer. 1 2 3 4 5

Demurrer to
the declaration.

1851, 233, § 26.
1852, 312, § 17.
G. S. 129, § 11.
P. S. 167, § 11.

‡ SECTION 14. The defendant may demur to the declaration or to one or more counts therein, and shall assign specifically the causes of demurrer. 1 2 3

122 Mass. 163.

6 Allen, 417.

144 Mass. 523.

11 Allen, 283.

97 Mass. 30.

151 Mass. 573.

112 Mass. 90.

163 Mass. 402.

1 † SECTION 15. The plaintiff may demur to the answer or to so much thereof as applies to one or more counts in the declaration, and shall assign specifically the causes of demurrer.

P. S. 167, § 25.

6 Allen, 407.

97 Mass. 502.

124 Mass. 364.

Demurrer to the answer.
1851, 233, § 30.
1852, 312, § 20.
G. S. 129, § 24.

1 † § SECTION 16. Demurrers may be for the following as well as other causes : —

G. S. 129, § 12.

P. S. 167, § 12.

1852, 312, §§ 21, 30.

13 Gray, 64.

8 Allen, 356.

Causes for demurrer.
1851, 233, §§ 31, 40.

3 First, That a count in contract and a count in tort, or that a count in the plaintiff's own right and a count in some representative capacity, are improperly joined in the declaration ; or that a declaration in contract or in tort is inserted in a writ of replevin.

12 Cush. 483.
156 Mass. 262.

7 Second, That the declaration or some count thereof does not state a legal cause of action substantially in accordance with the rules contained in this chapter.

112 Mass. 237.

10 Third, That the answer does not state a legal defence to the declaration or to some count thereof substantially in accordance with the rules contained in this chapter.

6 Allen, 406.

13 The demurrer shall point out specifically the particulars in which the alleged defect consists, and the attorney, if any, shall certify upon the demurrer that he is of opinion that there is such probable ground in law therefor as to make it a fit subject for judicial inquiry and trial and that it is not intended merely for delay.

Certificate.
16 Gray, 125.
1 Allen, 193.
8 Allen, 356.
100 Mass. 195.
109 Mass. 481.
114 Mass. 487.
118 Mass. 380.

1 † § SECTION 17. If a demurrer has been sustained, overruled or withdrawn, the court shall make an order relative to the filing of an answer or replication or a trial of the facts.

P. S. 167, § 67.

7 Gray, 427.

2 Allen, 130.

163 Mass. 402.

Pleading after demurrer.
1851, 233, § 33.
1852, 312, § 23.
G. S. 129, § 64.

Answers, Replications, etc.

1 † SECTION 18. A defence to a real, personal or mixed action, which formerly might have been made by plea in abatement, may be made by answer in abatement.

P. S. 167, § 13.
12 Met. 266.

11 Allen, 149.
12 Allen, 134.

105 Mass. 208.
121 Mass. 597.

150 Mass. 550.
163 Mass. 262.

Answer in abatement.
1851, 233, § 37.
1852, 312, § 27.
G. S. 129, § 13.

1 † SECTION 19. If an answer in abatement is overruled on demurrer, or if, in consequence of such answer in abatement, the plaintiff amends, the defendant, within such time as the court orders, shall in a personal action answer, and in a real or mixed action plead, to the merits.

Answering over.
1851, 233, § 39.
1852, 312, § 29.
G. S. 129, § 14.
P. S. 167, § 14.

1 † SECTION 20. In personal actions, the defendant shall file an answer to the declaration. In real and mixed actions, he may plead the general issue, and may give in evidence thereunder all matters which he might formerly have pleaded in bar.

P. S. 167, §§ 15, 30.
1886, 64.

1893, 396, § 23.
1894, 431.

19 Pick. 455.
6 Gray, 107.

123 Mass. 187.
132 Mass. 110.

Answer or general issue.
1836, 273, § 1.
1851, 233, § 20.
1852, 312, § 12.
G. S. 129, § 15.

1 * SECTION 21. In actions before trial justices, the defendant may answer in writing or may orally deny the right of the plaintiff to maintain his action. In the latter case, an entry shall be made on the record that the defendant appears and denies the plaintiff's right to maintain his action and puts himself on trial, or in words to that effect.

Answers before trial justices.
R. S. 85, § 11.
G. S. 129, § 16.
P. S. 155, § 27.
9 Gray, 361.
6 Allen, 25.
98 Mass. 528.

Joint answer. † § SECTION 22. Two or more defendants who make the same 1
 1851, 233, § 21. defence may answer or plead jointly. Different consistent defences 2
 1852, 312, § 13. may be separately stated in the same answer or plea. 3
 G. S. 129, § 16.
 P. S. 167, § 16.

11 Gray, 15.

3 Allen, 73.

Pleadings on ‡ SECTION 23. A case which is taken to the superior court upon 1
 appeal. appeal from the judgment of a police, district or municipal court 2
 R. S. 85, § 12. or trial justice may be there tried upon the issue joined below: 3
 G. S. 120, § 28. or the superior court may order the defendant to answer or plead 4
 P. S. 155, § 35. in the usual manner, and the case shall then be tried upon such issue 5
 1893, 396, § 32. as may be joined therein. 6
 1 Met. 309.
 6 Allen, 25.
 126 Mass. 399.
 128 Mass. 603.
 134 Mass. 377.

177 Mass. 397.

Answer in bar. † § SECTION 24. The answer shall deny in clear and precise terms 1
 1851, 233, § 22. every substantive fact which is intended to be denied in each count 2
 1852, 312, § 14. of the declaration separately, or it shall declare the defendant's 3
 G. S. 129, § 17. ignorance of the fact, so that he can neither admit nor deny but 4
 5 Gray, 457, 541. leaves the plaintiff to prove the same. 5
 4 Allen, 377.
 5 Allen, 300, 599.
 6 Allen, 10.
 7 Allen, 61.

10 Allen, 18, 460.

11 Allen, 523.
98 Mass. 222.100 Mass. 216.
119 Mass. 376.123 Mass. 574.
124 Mass. 457.129 Mass. 50.
132 Mass. 110.

Answers to † § SECTION 25. In answering the common counts and the count 1
 separate items, on an account annexed, the defendant shall answer specifically 2
 etc. every item contained in the bill of particulars or account annexed, 3
 1851, 233, § 24. but he may make one and the same allegation or denial relative to 4
 1852, 312, § 15. any number of items to which such allegation or denial is applica- 5
 G. S. 129, § 18. ble, specifying the number of the items thus answered together, 6
 P. S. 167, § 18. if less than the whole. If the defendant denies that an item is 7
 2 Gray, 521. due or payable, or that he owes the plaintiff as alleged, he shall 8
 112 Mass. 405. state all the substantive grounds on which he intends to rest such 9
 denial, and shall specify whether the whole or a part of such item 10
 or demand is denied, and if a part only is denied, he shall specify 11
 such part. 12

General or † § SECTION 26. A denial by answer, affidavit or otherwise of a 1
 partial denial. time, amount, quantity or place alleged shall declare whether it 2
 1851, 233, § 25. is applicable to every time, amount, quantity or place or not: and 3
 1852, 312, § 16. if not, what time, amount, quantity or place it admits. 4
 G. S. 129, § 19.
 P. S. 167, § 19.

Answer in † § SECTION 27. An answer shall state clearly and precisely each 1
 avoidance. substantive fact which is intended to be relied upon in avoidance 2
 1851, 233, § 27. of the action, and if it sets up the statute of limitations, the 3
 1852, 312, § 18. statute of frauds or any other legal bar, the defendant shall have 4
 G. S. 129, § 20. the benefit of such defence although the answer does not deny the 5
 P. S. 167, § 20. facts set forth in the declaration. 6
 5 Gray, 541.
 2 Allen, 18.
 7 Allen, 141.
 12 Allen, 419.
 99 Mass. 194.

106 Mass. 51.
109 Mass. 398.
112 Mass. 387.
113 Mass. 250.116 Mass. 547.
117 Mass. 14.
119 Mass. 187.
120 Mass. 209.123 Mass. 572.
125 Mass. 417, 562.
128 Mass. 25.
133 Mass. 439.135 Mass. 99.
139 Mass. 110.
141 Mass. 587.
151 Mass. 8, 275.

Equitable § SECTION 28. The defendant may allege in defence any facts 1
 defences. which would entitle him in equity to be absolutely and uncon- 2
 1883, 223, § 14. ditionally relieved against the plaintiff's claim or cause of action 3
 140 Mass. 63. or against a judgment recovered by the plaintiff in such action. 4
 141 Mass. 440.
 149 Mass. 275.
 150 Mass. 27.

154 Mass. 389.

158 Mass. 313.

170 Mass. 526.

Written instru- ‡ § SECTION 29. Written instruments which are relied on in an 1
 ments, how answer or in a subsequent pleading shall be set out, or copies or 2
 pleaded.

3 the originals shall be filed, in the manner provided for declaring 1851, 233, § 2.
4 thereon in the tenth clause of section six. 1852, 312, § 2.
G. S. 129, § 21.
P. S. 167, § 22. 11 Gray, 179. 171 Mass. 492.

1 † SECTION 30. If a conditional obligation, contract or grant is Conditional
2 relied on in an answer or subsequent pleading, the condition shall obligations,
3 be considered a part of the instrument, and similar averments shall etc., how
4 be required in pleading on the same as are required by the eleventh pleaded.
5 clause of section six. 1851, 233, § 2.
1852, 312, § 2.
G. S. 129, § 22.
P. S. 167, § 23.

1 † SECTION 31. The plaintiff may, at any time before trial, file Replication.
2 a replication to the answer, clearly and specifically stating any facts 1851, 233, §§ 28,
3 in reply to new matter therein ; but, except as hereinafter provided, 29.
4 no further pleading shall be required after the answer. Any new 1852, 312, § 19.
5 matter in avoidance of the action which the answer contains shall G. S. 129, § 23.
6 be considered to be denied by the plaintiff without a replication, P. S. 167, § 24.
7 unless the court, upon motion of the defendant, requires him to 7 Allen, 239.
8 reply thereto, and to state what part, if any, he admits or denies. 12 Allen, 485.
103 Mass. 21.
133 Mass. 439.
136 Mass. 386.
177 Mass. 455.

1 § SECTION 32. The plaintiff may, in reply to a defence alleged Equitable
2 by the defendant, allege any facts which would in equity avoid such defences.
3 defence or which would entitle the plaintiff to be absolutely and 1883, 223, § 14.
4 unconditionally relieved in equity against such defence. 161 Mass. 91.

1 † SECTION 33. An answer or replication may allege facts which Supplemental
2 occur after the commencement of the action, and the court may declaration.
3 allow a supplemental declaration, answer or replication to be filed, 1851, 233, § 34.
4 alleging material facts which occurred or came to the knowledge 1852, 312, § 24.
5 of the party after the former declaration, answer or replication was G. S. 129, § 25.
6 filed. P. S. 167, § 26.
11 Gray, 14.
106 Mass. 55.
128 Mass. 254.
162 Mass. 300.

1 † SECTION 34. A party may allege a fact or title alternatively, Alternative
2 declaring his belief of one alternative or the other, and his igno- averments.
3 rance whether it is the one or the other. 1851, 233, § 35.
1852, 312, § 25.
G. S. 129, § 26.
P. S. 167, § 27.

1 † SECTION 35. The allegations and denials of each party shall Construction
2 be so construed by the court as to secure as far as possible sub- of pleadings.
3 stantial precision and certainty and to discourage vagueness and 1851, 233, § 36.
4 loose generalities. A substantive fact which is alleged with sub- 1852, 312, § 26.
5 stantial precision and certainty and is not denied in clear and pre- G. S. 129, § 27.
6 cise terms, shall be held to be admitted. No party shall be required P. S. 167, § 28.
7 to state evidence, or to disclose the means by which he intends to 1 Gray, 450.
8 prove his case. 3 Gray, 261.
4 Gray, 65, 446.
9 Gray, 75.
15 Gray, 87.
4 Allen, 380.
7 Allen, 361.
100 Mass. 217.
116 Mass. 515. 125 Mass. 534. 131 Mass. 283. 135 Mass. 99.

1 † § SECTION 36. A personal action shall be considered at issue Action, when
2 when the pleadings are closed, and a real or mixed action, when at issue.
3 the plea is filed. 1851, 233, § 41.
1852, 312, § 31.
G. S. 129, § 28.
P. S. 167, § 29. 122 Mass. 431.

Interpleader.

1 † SECTION 37. If, in an action at law, the defendant admits his Interpleader.
2 liability, and the amount thereof is not disputed, but it appears that 1886, 281.
3 such amount is claimed by the husband or wife of the plaintiff or by 152 Mass. 407.
157 Mass. 428.
168 Mass. 48.
170 Mass. 369.

any person other than the plaintiff and that the defendant has no interest in the subject matter of the controversy, the court may, upon the petition of the defendant, stating the names and residences of all known claimants and the amount actually due from the defendant, and after such notice as the court shall order to the plaintiff and to such claimants, order such claimants to be made defendants, and shall thereupon hear and determine the rights of the respective parties in and to said amount. The defendant may hold such amount until final judgment, and shall then pay it over in accordance with the order of the court, or he may pay it into court to await final judgment, and thereupon the action shall be discontinued as to the defendant and his liability for said amount shall cease. The costs of the defendant in such case shall be in the discretion of the court, and may be charged upon the fund.

Interpleader.
1899, 352.

‡ SECTION 38. If, in an action at law, in which property held by a public warehouseman or other depository is sought to be recovered or the title thereto determined, it appears that such property is claimed by the husband or wife of the plaintiff or by any person other than the plaintiff, the court, upon the petition of the defendant, stating the names and residences of all known claimants, and after such notice as the court shall order to the plaintiff and to such claimants, may order such claimants to be made defendants and shall thereupon hear and determine the rights and interests of the respective parties in and to such property, which may remain in the custody of the public warehouseman or other depository until final judgment, and shall then be delivered in accordance with the order of the court.

PRACTICE.

Indorsement of Process before Entry.

Indorsement
of writs before
entry.

C. L. 7, § 1.
1708-9, 3, § 1.
1714, 3, § 1.
1728-9, 1.
1784, 28, § 11.
1833, 50, §§ 2, 5.
R. S. 90, §§ 10,
11; 99, § 29;
100, § 28; 103,
§ 73; 112, § 24;
117, § 36.
G. S. 123, § 20;
136, § 7; 146,
§ 37; 150, § 42.
P. S. 161, § 24;
178, § 6; 187,
§ 38; 191, § 14.
1895, 234, § 26.
14 Pick. 212.

‡ § SECTION 39. Original writs, writs of audita querela, writs of scire facias by private persons on judgment or recognizance, writs of error in civil cases, writs of and petitions for review, petitions for partition in the superior court, petitions to establish liens on buildings and land, petitions for certiorari or mandamus and bills in equity, in which the plaintiff is not an inhabitant of the commonwealth, shall, before the entry thereof, be indorsed by a responsible person who is such inhabitant; but if one of the plaintiffs is such an inhabitant, the process need not be so indorsed. Every indorser, in case of avoidance or inability of the plaintiff, shall be liable to pay all costs which may be awarded against the plaintiff if an action therefor is commenced within one year after the original judgment.

3 Met. 59.
8 Met. 146.

8 Cush. 98.
12 Gray, 190.

1 Allen, 276.
5 Allen, 206.

138 Mass. 115.
142 Mass. 141.

Indorsement of Process after Entry.

— after entry.
1865, 45, § 1.
P. S. 161, § 25.

‡ § SECTION 40. If a plaintiff who is not an inhabitant of the commonwealth has, by accident, mistake or inadvertence, failed to have his writ, bill or petition indorsed as required by the preceding section, the court may at any stage of the case, upon terms, allow him to procure an indorser with the same effect as if the writ, bill or petition had been indorsed before the entry thereof.

1 ‡ § SECTION 41. If, after the commencement of an action, the
 2 plaintiff removes from the commonwealth, the court, upon motion of
 3 any other party, shall, and of its own motion may, require the plain-
 4 tiff to procure a responsible indorser. P. S. 167, § 30.
 21 Pick. 212. 8 Cush. 98. 1 Gray, 114. 99 Mass. 460. Indorser upon
 removal of
 plaintiff.
 1833, 50, § 3.
 R. S. 90, § 10;
 100, § 28; 112,
 § 24.
 G. S. 129, § 29.

1 ‡ § SECTION 42. If an indorser removes from the commonwealth
 2 or ceases to be responsible, the court may require the plaintiff to
 3 procure a responsible indorser. 1833, 50, § 3.
 R. S. 90, § 12. G. S. 129, § 30. P. S. 167, § 31. 17 Mass. 222. — removing,
 etc., another
 required.
 1784, 28, § 11.

1 § SECTION 43. The supreme judicial court may require an in-
 2 dorser or security for the payment of costs in a probate or insolvent
 3 case or proceeding pending therein. P. S. 167, § 32. — in probate
 cases, etc.
 1846, 234.
 G. S. 129, § 31.

1 ‡ § SECTION 44. If a plaintiff fails to procure an indorser ac-
 2 cording to the order of the court, his action shall be dismissed and
 3 the defendant or other party shall recover his costs. — if not pro-
 cured, suit
 dismissed.
 1784, 28, § 11.
 1833, 50, § 3.
 R. S. 90, § 13. G. S. 129, § 32. P. S. 167, § 33.

1 ‡ § SECTION 45. The court may permit the name of an indorser
 2 to be stricken out and a new and responsible indorser to be substi-
 3 tuted. Every indorser shall be liable for costs from the commence-
 4 ment of the action. G. S. 129, § 33. P. S. 167, § 34. 6 Mass. 494. — substitution
 and liability of.
 1784, 28, § 11.
 1833, 50, § 5.
 R. S. 90, §§ 11,
 12.

Abatement.

1 ‡ § SECTION 46. No writ, process, action, declaration or other
 2 proceeding in the courts or course of justice shall be abated, arrested,
 3 quashed or reversed for any circumstantial errors or mistakes if
 4 by it the person and case may be rightly understood by the court;
 5 or for defect or want of form only. R. S. 100, § 21. G. S. 129, § 34.
 P. S. 167, § 35. 2 Cush. 491, 555. 10 Allen, 537. 108 Mass. 340. Effect of
 answer.
 No abatement
 for circum-
 stantial errors.
 B. L. 25.
 C. L. 7, § 2.
 1701-2, 5, § 1.
 1784, 28, § 14.

1 ‡ § SECTION 47. If an issue of fact is found against the defend-
 2 ant upon an answer in abatement, final judgment, subject to the
 3 provisions of section fifty, shall be rendered against him. Judgment
 upon issue of
 fact.
 1851, 233, § 38.
 1852, 312, § 28.
 G. S. 129, § 39.
 P. S. 167, § 40. 3 Met. 420. 125 Mass. 472. 152 Mass. 419.
 24 Pick. 51. 113 Mass. 34. 128 Mass. 600. 155 Mass. 26.

Amendments.

1 ‡ § SECTION 48. The court may, at any time before final judg-
 2 ment, except as otherwise provided, allow amendments introducing
 3 a necessary party, discontinuing as to a party or changing the form
 4 of the action, and may allow any other amendment in matter of
 5 form or substance in any process, pleading or proceeding which may
 6 enable the plaintiff to sustain the action for the cause for which
 7 it was intended to be brought, or which may enable the defendant
 8 to make a legal defence. P. S. 167, § 42. Changing par-
 ties, form, etc.
 1701-2, 5, § 1.
 1784, 28, § 14.
 1826, 70, § 2.
 1833, 194.
 1834, 189.
 R. S. 93, § 24;
 100, §§ 1, 6, 7, 22.
 1836, 273, § 3.
 1839, 151, §§ 1, 2.
 1851, 233, § 42.
 1852, 312, § 32.
 G. S. 129, § 41.

3 Mass. 208.	15 Gray, 186.	115 Mass. 326.	144 Mass. 383.
4 Mass. 506.	1 Allen, 529.	122 Mass. 438.	146 Mass. 378.
16 Pick. 412, 485.	7 Allen, 489.	126 Mass. 333.	147 Mass. 342.
2 Met. 505.	8 Allen, 63.	128 Mass. 235.	148 Mass. 504.
10 Met. 525.	10 Allen, 460.	131 Mass. 407.	168 Mass. 223.
2 Cush. 12.	107 Mass. 82.	132 Mass. 194.	170 Mass. 260, 262.
10 Cush. 284.	108 Mass. 355.	135 Mass. 189.	172 Mass. 401.
12 Cush. 448.	112 Mass. 180.	139 Mass. 280.	174 Mass. 45.
12 Gray, 139.	114 Mass. 481.	143 Mass. 48.	177 Mass. 397, 404.

Amendment
after demur-
rer.
1851, 233, § 30.
1852, 312, § 20.

† SECTION 49. The court may allow a party to whose pleadings a demurrer has been filed to amend, upon terms, within such time as the court orders.

G. S. 129, § 24.

P. S. 167, § 25.

— of answer in
abatement.

1851, 233, § 38.
1852, 312, § 28.
G. S. 129, § 40.
P. S. 167, § 41.
113 Mass. 34.
124 Mass. 81.

† § SECTION 50. If the defect upon which a plea or answer in abatement is founded is capable of amendment, the court may allow the plaintiff to amend, upon terms. The court may allow the defendant to amend an answer in abatement or to answer over by special order of the court for good cause shown, and not otherwise.

125 Mass. 472.

155 Mass. 26.

Joinder of new
defendants.

1833, 194.
R. S. 100, §§ 2-5.
G. S. 129, §§ 36-
38.
P. S. 167, §§ 37-
39.
6 Allen, 350.

† § SECTION 51. If a new defendant is introduced by amendment, the plaintiff may take out against him a new writ of capias and attachment or of summons in such form, and returnable at such time, as the court orders. Upon service and return of such new writ, like proceedings may be had as if the person named therein had been originally made a party.

Amendments
changing
actions at law
into suits in
equity, and
vice versa.

1865, 179, §§ 1, 2.
P. S. 167, § 43.
1883, 223, § 17.
101 Mass. 378.
133 Mass. 536.
168 Mass. 72.
170 Mass. 526.

§ SECTION 52. The supreme judicial court or the superior court may, at any time before final judgment, and upon terms, allow amendments changing an action at law into a suit in equity, or a suit in equity into an action at law, if it is necessary to enable the plaintiff to sustain the action or suit for the cause for which it was intended to be brought. The court in which the amendment is allowed shall retain jurisdiction of the cause as amended.

— after judg-
ment.

1701-2, 5, § 1.
1784, 28, § 14.
R. S. 100, § 23.
G. S. 129, § 42.
P. S. 167, § 44.
3 Cush. 11.
10 Allen, 537.

† § SECTION 53. The court in which a judgment has been rendered, or to which it has been removed by writ of error, may, if justice so requires and the amendment is in affirmance of the judgment, allow formal defects or imperfections in the record or proceedings to be corrected or amended.

104 Mass. 364.

111 Mass. 160.

Defaults.

Defaults.

C. L. 87, § 6.
1701-2, 5, § 2.
1784, 28, §§ 6, 7.
R. S. 85, § 9; 92,
§§ 1, 2; 97, § 2.
1851, 233, § 14,
17.
1852, 312, §§ 10,
11.
G. S. 129, § 11;
129, §§ 43-45;
133, §§ 1, 2.
1870, 68.
P. S. 155, § 22;
167, §§ 43-47;
171, §§ 1, 2.
1885, 384, §§ 7,
10, 11.
1893, 396, § 19.
1894, 431.
6 Mass. 4.
14 Pick. 92.
13 Gray, 459.
99 Mass. 404.
145 Mass. 18.
157 Mass. 417.
168 Mass. 297.

† § SECTION 54. If the defendant in an action commenced in the supreme judicial court or the superior court, having been duly served with process, fails to enter an appearance in writing within ten days after the return day of the writ, his default shall be recorded, and after the expiration of four days from such default, the plaintiff may have judgment entered by order of the court or by the clerk as of course without any further order. Upon a default at any stage of the proceedings in an action pending in said courts, the damages shall, upon motion of either party, be assessed by a jury. If the defendant in an action commenced in a police, district or municipal court or before a trial justice, having been duly served with process, fails to appear or answer thereto, his default shall be recorded and judgment shall be rendered for the plaintiff with costs. Courts may, for good cause shown, extend the time for entering an appearance, and may, in their discretion and upon terms, take off a default at any time before judgment.

Advancing Causes for Speedy Trial.

Advancing
actions for
speedy trial.
1874, 248, § 3.
1875, 212, § 2.

SECTION 55. If, in an action in which the plaintiff seeks merely to recover a debt or a liquidated demand, with or without interest, the defendant has appeared, the plaintiff may, within twenty days

4 after the expiration of the time allowed to the defendant for filing
 5 an answer, file an affidavit verifying the cause of action and stating
 6 that in his belief there is no defence thereto, and thereupon the clerk
 7 shall issue an order requiring the defendant to show cause why judg-
 8 ment should not be given for the plaintiff. The plaintiff shall
 9 immediately give notice in writing to the defendant of such order,
 10 and unless the defendant, within seven days after such notice, or
 11 within such further time as the court may allow, consents to a de-
 12 fault and to judgment for the amount demanded, or unless he dis-
 13 closes, by affidavit or in such other manner as the court may order,
 14 such facts as the court finds entitle him to defend, the court, shall ad-
 15 vance such action for speedy trial; but if, upon a hearing under such
 16 order and notice, the court does not so advance the action, it may
 17 in its discretion award the defendant reasonable costs. The court
 18 shall require the defendant to disclose specifically and clearly the
 19 substantive facts upon which he relies.

P. S. 167, § 48.
 117 Mass. 334.

Claim of Trial by Jury.

1 § SECTION 56. A separate list of cases which are to be tried
 2 by a jury shall be kept in the supreme judicial court and the su-
 3 perior court, and no action shall be entered thereon unless a different
 4 provision is elsewhere expressly made, or unless a party, before
 5 issue joined, or within ten days after the time allowed for the filing
 6 of the answer or plea, or within ten days after the answer or plea
 7 has by consent of the plaintiff or by permission of the court been
 8 filed, or within such time after the parties are at issue as the court
 9 may by general or special order direct, files a notice that he desires
 10 a trial by jury; but in a case in which damages are demanded, the
 11 court may of its own motion refer the assessment thereof to a jury.

Jury trial, how
 claimed.
 R. S. 97, § 3.
 1857, 267, § 1.
 G. S. 129, § 66;
 133, § 3.
 1874, 248, § 1.
 1875, 212, § 1.
 P. S. 167, § 69;
 171, § 3.
 1894, 357.
 132 Mass. 354,
 356.
 135 Mass. 591.
 142 Mass. 182.
 160 Mass. 370.
 163 Mass. 21.
 170 Mass. 1.

Interrogatories.

1 ‡ § SECTION 57. The plaintiff, after the entry of the action, and
 2 the defendant, after answer, or in a real or mixed action, after plea,
 3 and before the opening of the trial on the merits, may file in the
 4 clerk's office or in the office of a justice who has no clerk, or with a
 5 trial justice, interrogatories to the adverse party for the discovery of
 6 facts and documents material to the support or defence of the action.

Interroga-
 tories.
 1851, 233, § 98;
 325, § 2.
 1852, 312, §§ 61,
 90.
 G. S. 129, §§ 46,
 86.
 P. S. 167, §§ 49,
 93.
 2 Gray, 558.
 14 Gray, 484.

15 Gray, 545.
 3 Allen, 110.
 5 Allen, 109.

100 Mass. 320.
 104 Mass. 27.
 106 Mass. 338.

107 Mass. 113.
 111 Mass. 154.
 127 Mass. 226.

128 Mass. 293.
 155 Mass. 433.
 163 Mass. 481.

*Repeal &
 substituted
 1909 c.*

1 ‡ § SECTION 58. An affidavit of the interrogating party or of
 2 his attorney that he has reason to believe that the interrogating
 3 party will derive some material benefit in the action from the dis-
 4 covery which he seeks, if the discovery is fairly made, and that it
 5 is not sought for the purpose of delay, shall be annexed to such
 6 interrogatories.

Affidavit to be
 annexed.
 1851, 233, § 100.
 1852, 312, § 62.
 G. S. 129, § 47.
 P. S. 167, § 50.
 2 Gray, 558.
 14 Gray, 484.

1 ‡ § SECTION 59. Interrogatories shall be answered, and the an-
 2 swers shall be filed in the clerk's office, within ten days after notice
 3 of the filing thereof has been given to the party interrogated or to
 4 his attorney, unless, upon cause shown either before or after the
 5 expiration of said ten days, further time is allowed by the court.

Answers.
 1851, 233, § 101;
 325, § 2.
 1852, 312, §§ 63,
 90.
 G. S. 129, §§ 48,
 86.
 P. S. 167, §§ 51,
 93.

11 Cush. 26, 158.
3 Gray, 215.
128 Mass. 293.
136 Mass. 386.

Answers to interrogatories filed before a police, district or municipal court or trial justice shall be filed within such time as such courts or trial justices shall respectively order. 6
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8

Form and contents of answers.
1851, 233, §§ 103, 104.
1852, 312, §§ 65, 67.
G. S. 129, §§ 49, 51.

‡ § SECTION 60. Each interrogatory shall be answered separately and fully. The answers shall be in writing, under oath, and shall be signed by the party interrogated, who may introduce into his answer any matter relevant to the issue to which the interrogatory relates. 1
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P. S. 167, §§ 52, 54. 3 Gray, 220. 8 Gray, 520.
13 Allen, 329. 109 Mass. 209. 125 Mass. 572.

Examination of corporate officers.
1852, 312, § 66.
G. S. 129, § 50.
P. S. 167, § 53.
100 Mass. 329.

‡ § SECTION 61. If a corporation is a party to an action, the adverse party may examine the president, treasurer, clerk or a director, manager or superintendent or other officer thereof as if he were a party. 1
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109 Mass. 212. 171 Mass. 417.

Protection of immaterial matter.
1851, 233, § 105.
1852, 312, § 68.
G. S. 129, § 52.
P. S. 167, § 55.
8 Gray, 529.

‡ § SECTION 62. If a document, book, voucher or other writing called for by an interrogatory contains matters not pertinent to the subject of the action, the answer may state such fact and that such part has been sealed up or otherwise protected from examination; and thereupon such part shall not be inspected by the interrogating party, but he may apply to the court and obtain an order to inspect the part so protected from examination, or so much thereof as the court, upon a hearing, or if necessary, by its own inspection, shall find to have been improperly withheld and concealed. 1
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Privileges of party interrogated.
1851, 233, § 106.
1852, 312, § 69.
G. S. 129, § 53.
P. S. 167, § 56.
2 Gray, 558.
3 Allen, 110.
5 Allen, 109.
104 Mass. 27.

‡ § SECTION 63. The party interrogated shall not be obliged to answer a question or produce a document if it would tend to criminate him, or to disclose his title to any property the title whereof is not material to the trial of the action in the course of which he is interrogated, or to disclose the names of the witnesses by whom, or the manner in which, he proposes to prove his own case. 1
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Irrelevant matter to be expunged.
1851, 233, § 107.
1852, 312, § 70.
G. S. 129, § 54.
P. S. 167, § 57.
139 Mass. 98.

‡ § SECTION 64. If an answer contains irrelevant matter, or if it is not full and clear, or if an interrogatory is not answered, and the party interrogated refuses to expunge or amend, or to answer a particular interrogatory, the court or a justice thereof may, upon motion, order such irrelevant matter to be expunged, or such imperfect answer to be made full and clear, or such interrogatory to be answered, within such time as it may order. 1
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Costs upon irrelevant answer.
1851, 233, § 108.
1852, 312, § 71.
G. S. 129, § 55.
P. S. 167, § 58.

‡ § SECTION 65. If an answer is adjudged irrelevant or insufficient, or if a party is ordered to answer an interrogatory, such order may be made respecting costs, either in the action or otherwise, as the court may direct by general rules or by a special order in each case. 1
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Refusal to answer, etc.
1851, 233, § 109.
1852, 312, § 72.
G. S. 129, § 56.

‡ § SECTION 66. If a party neglects or refuses to expunge, amend or answer according to the requirements of this chapter, the court may enter a nonsuit or default. 1
2
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P. S. 167, § 59.
8 Gray, 529.

14 Allen, 9.
127 Mass. 226.

128 Mass. 263.
136 Mass. 291.

139 Mass. 98.

1 ‡ § SECTION 67. If the court finds that due diligence has been
 2 used, it may allow interrogatories, with an affidavit stating the rea-
 3 son why they were not filed earlier, to be filed during the trial of
 4 an action. They shall be answered forthwith or with as little de-
 5 lay as practicable, and the court may suspend the trial for the
 6 purpose of having them answered. 136 Mass. 291. 139 Mass. 98.

Interroga-
 tories during
 trial.
 1851, 233, § 111.
 1852, 312, § 74.
 G. S. 129, § 57.
 P. S. 167, § 60.
 127 Mass. 226.
 128 Mass. 233.

Interlocutory Orders.

1 ‡ § SECTION 68. The court may in all cases order either party to
 2 file a statement of such particulars as may be necessary to give to
 3 the adverse party and to the court reasonable knowledge of the
 4 nature and grounds of the action or defence. 3 Gray, 266. 11 Allen, 283. 129 Mass. 306.

Statement of
 nature of ac-
 tion or defence.
 1851, 233, § 4.
 1852, 312, § 4.
 G. S. 129, § 58.
 P. S. 167, § 61.

1 ¶ § SECTION 69. Orders allowing amendments before trial, or
 2 allowing a supplemental declaration, answer or replication, or en-
 3 larging time, or any other interlocutory order which is necessary
 4 to prepare the case for trial, may be made by the court or by
 5 a justice thereof, in any county; but the several courts shall make
 6 such rules relative to notice, the times and places for motions at
 7 chambers and other matters, as they shall from time to time find
 8 necessary. Orders, etc., preparatory to trial, when made.
 1851, 233, § 45.
 1852, 312, § 35.
 G. S. 129, § 59.
 1867, 31.
 P. S. 167, § 62.
 128 Mass. 296.

Agreements of Parties.

1 ¶ § SECTION 70. Parties may make agreements relative to amend-
 2 ments and the time of filing papers, which shall be equivalent to an
 3 order of the court to the same effect. Any order mentioned in the
 4 preceding section may be entered by consent in writing signed by
 5 the parties or their attorneys; but all agreements of attorneys rel-
 6 ative to an action or proceeding shall be in writing: otherwise they
 7 shall be of no validity. Agreements.
 1851, 233, § 46.
 1852, 312, §§ 36, 88.
 G. S. 129, §§ 60, 61.
 P. S. 167, §§ 63, 64.
 8 Allen, 45.
 124 Mass. 241.
 148 Mass. 348.
 156 Mass. 308.

1 ¶ § SECTION 71. If the parties agree to continue a case with-
 2 out costs until the next sitting, it shall be continued accordingly;
 3 but the court may by a general or special order regulate the place
 4 on the docket in which the case shall stand at the next sitting. Continuances by agreement.
 1852, 312, § 88.
 G. S. 129, § 61.
 P. S. 167, § 64.

Offer of Judgment.

1 ‡ § SECTION 72. If the defendant in an action at law or a suit in
 2 equity, wherein damages only are sought to be recovered, offers in
 3 court and by a writing consents to be defaulted, and to have judg-
 4 ment rendered against him as damages for an amount therein speci-
 5 fied, the writing and the time when it was filed shall be entered of
 6 record; and if the plaintiff within ten days, or such further time
 7 as the court shall allow, after receipt of notice thereof accepts such
 8 offer, the court shall render judgment accordingly, with costs to
 9 the date of the notice. Such judgment rendered by a police,
 10 district or municipal court or trial justice shall be final. Offer of judg-
 ment.
 1852, 140, § 1.
 G. S. 129, § 62.
 1877, 236, § 2.
 P. S. 155, § 36;
 167, § 65.
 1893, 396, § 20.
 1894, 431.
 97 Mass. 148.
 98 Mass. 528.
 165 Mass. 238.

1 ‡ § SECTION 73. If the plaintiff does not elect to accept such offer,
 2 and does not recover as damages an amount, excluding interest from
 Costs to de-
 fendant on
 non-accept-
 ance.

1852, 140, § 2.
G. S. 129, § 63.
P. S. 167, § 66.
97 Mass. 148.
102 Mass. 122.
136 Mass. 359.
148 Mass. 592.

the date of the offer, larger than the amount so offered by the defendant, he shall have judgment for his costs only to the date of the offer, and the defendant shall have judgment for his costs after said date.

Hearings, Trial, Evidence.

Jury waived cases and demurrers, how heard.
1851, 233, § 33.
1852, 312, § 23.
G. S. 129, § 64.
1874, 248, § 1.

§ SECTION 74. Actions in which neither party has filed notice that he desires a trial by jury shall, unless otherwise expressly provided, be heard and determined by the court. Demurrers may in the first instance be heard by one justice.

4 Gray, 62. 124 Mass. 227. P. S. 167, §§ 67, 69.
10 Gray, 501. 132 Mass. 354, 356. 156 Mass. 88.
115 Mass. 129. 135 Mass. 28, 301. 170 Mass. 1.
173 Mass. 382.

Frivolous or immaterial demurrers.
1851, 233, § 33.
1852, 312, § 23.
G. S. 129, § 65.
P. S. 167, § 68.
4 Gray, 62.
110 Mass. 498.

§ SECTION 75. If a demurrer is overruled because it appears to the justice who hears it to be frivolous, immaterial or intended for delay, the case shall proceed to judgment as if no demurrer had been filed, and execution may be awarded or stayed upon terms. If execution is not awarded, any security which has been taken shall stand as if no judgment had been entered until an order is made for final judgment.

Decisions on answers in abatement, etc., final.
1840, 87, § 4.
1851, 233, § 33.
1852, 312, § 23.

§ SECTION 76. Decisions of one justice upon questions raised upon an answer or plea in abatement, upon a motion to dismiss for defect of form of process or upon a demurrer for misjoinder of counts shall be final.

1855, 449, § 5. 1859, 196, § 27.
G. S. 115, § 7; P. S. 153, § 8; 150 Mass. 550. 168 Mass. 303.
129, § 64. 167, § 67. 156 Mass. 522. 170 Mass. 569.
1880, 118. 115 Mass. 129. 160 Mass. 256. 175 Mass. 187.

Postponement of actions on trial list.
1884, 304.
1890, 154.

§ SECTION 77. If the parties to an action upon the trial list at a sitting of the superior court file an agreement in writing that such action shall be marked for trial not before a certain day in the same or the succeeding sitting, the action shall, if reached in its order upon said trial list before such day, be postponed thereto, and shall be placed upon the list of actions in order for trial on such day next after the cases, if any, which were on the list for the preceding court day: but, if it is in order for trial and is reached for trial on the day upon which the agreement is filed, it shall not be postponed except by order of the court. If two or more actions are so postponed to the same day, they shall be placed upon the trial list for that day in the order in which the agreements for their postponement were filed. Instead of so postponing a case, the parties may, by a writing filed with the clerk, or orally in his presence, agree that the action be passed, and thereupon it may be temporarily stricken from the list, and may be restored thereto on such day as the parties shall, by a writing filed with the clerk, agree, or after three days' notice in writing given by either party to the other.

Trials not to be delayed or postponed, etc.
1851, 233, §§ 28, 29, 102.
1852, 312, §§ 19, 64, 88.
G. S. 129, §§ 68, 69.

† § SECTION 78. A trial shall not be delayed for want of a reply to the defendant's answer, nor because interrogatories have been filed and the time for answering them has not expired, unless by special order of the court: nor shall an agreement of parties relative to filing amendments or papers operate to postpone the trial of an

6 action beyond the time at which, by the rules of the court, it would P. S. 167, §§ 71,
7 be tried. 72.

1 § SECTION 79. The trial of questions of fact shall proceed al- Trials to pro-
2 though exceptions have been filed and allowed therein, and such ceed after
3 further proceedings shall be had as the court orders ; but judgment allowance of
4 shall not be entered unless the exceptions are adjudged immaterial, exceptions.
5 frivolous or intended for delay. 1804, 105, § 5.
1817, 185, § 5.
1820, 79, § 5.
R. S. 81, §§ 29,
33; 82, § 13.

1859, 196, § 28.

G. S. 115, § 9.

P. S. 153, § 11.

110 Mass. 497.

1 § SECTION 80. The courts shall not charge juries with respect Charges as to
2 to matters of fact, but they may state the testimony and the law. facts forbid-
den.

107 Mass. 329.
123 Mass. 248.

139 Mass. 164.
140 Mass. 473.

152 Mass. 12.
153 Mass. 177.

162 Mass. 242.
165 Mass. 153.

G. S. 115, § 5.
P. S. 153, § 5.

1 § SECTION 81. An attorney of record who is actually engaged Priority of
2 in the trial of a cause in the supreme judicial court or in the supe- engagements
3 rior court, or before an auditor who has been appointed by either of attorneys.
4 of said courts, shall not be required to proceed to the trial of any 1890, 451.
5 other cause in either of said courts or before another auditor except 1900, 418, § 2.
6 by special order of the court.

1 § SECTION 82. In counties which contain two or more shire Place of trial.
2 towns, the supreme judicial court or the superior court, at the 1882, 264, § 2.
3 sitting held on or next after the return day on which an action is
4 entered, may designate the shire town in which it shall be tried,
5 and it shall not then be put on the trial list for sittings held in
6 any other shire town of that county except by agreement of the
7 parties.

1 § SECTION 83. During the trial of a case in which an official Examination
2 stenographer takes stenographic notes of the evidence no other of witnesses.
3 person shall interrupt the examination of witnesses for the purpose 1885, 291, § 5.
4 of taking notes of their testimony.

1 || SECTION 84. If the plaintiff fails to introduce evidence at the Counts not
2 trial in support of a count in the declaration, it shall, if not wholly proved may be
3 or partly admitted by the answer, be stricken out; and the court stricken out.
4 may, either of its own motion or upon motion of a party, require 1851, 233, § 5.
5 unnecessary counts and statements to be stricken out of the plead- 1852, 312, § 5.
6 ings, and may impose terms. G. S. 129, § 71.
P. S. 167, § 74.
3 Gray, 261.
8 Gray, 589.
3 Allen, 471.

1 ‡ § SECTION 85. Pleadings shall not be evidence on the trial, Pleadings not
2 but the allegations therein shall bind the party who makes them. evidence.

P. S. 167, § 75.
13 Allen, 460.

108 Mass. 191.
109 Mass. 66.

124 Mass. 364.
140 Mass. 250.

173 Mass. 433.
176 Mass. 363.

R. S. 100, § 18.
1851, 233, § 112.
1852, 312, § 75.
G. S. 129, § 72.

1 ‡ SECTION 86. A signature to a written instrument which is Signatures ad-
2 declared on or set forth as a cause of action or as a ground of de- mitted unless
3 fence or set-off, shall be taken as admitted unless the party sought genuineness is
4 to be charged thereby files in court, within the same length of time denied.
5 after such instrument is pleaded as is allowed for an answer, a spe- 1877, 163.
6 cific denial of the genuineness thereof and a demand that it shall be P. S. 167, § 21.
7 proved at the trial. 5 Cush. 79.
14 Gray, 100.
125 Mass. 446.
129 Mass. 596.
133 Mass. 356.

136 Mass. 248.

138 Mass. 347.

146 Mass. 378.

Unaccepted
offer of judg-
ment.
1852, 140, § 3.
G. S. 129, § 73.
P. S. 167, § 76.

‡ § SECTION 87. An offer or consent which is made in pursuance of sections seventy-two and seventy-three and which is not accepted shall not be evidence against the party who makes it, either in a subsequent proceeding in the action or suit in which it is made or in another action or suit.

Answers to
interrogatories
may be read at
trial.
1851, 223, § 110.
1852, 312, § 73.
G. S. 129, § 74.
P. S. 167, § 77.
109 Mass. 209.
176 Mass. 363.

‡ § SECTION 88. The answer of a party to interrogatories filed may be read by the other party as evidence at the trial. The party interrogated may require that the whole of the answers upon any one subject-matter inquired of shall be read, if a part of them is read; but if no part is read, the party interrogated shall in no way avail himself of his examination or of the fact that he has been examined.

One matter in
answer not evi-
dence of an-
other.
1826, 107, § 2.
R. S. 100, § 18.
1851, 223, § 112.

‡ § SECTION 89. If a defendant answers two or more matters in his defence, no averment, confession or acknowledgment contained in one of them shall be used or taken as evidence against him on the trial of an issue joined on any other of them.

1852, 312, § 75.

G. S. 129, § 75.

P. S. 167, § 78.

Justification in
slander not
proof of
malice.
1826, 107, § 2.
R. S. 100, § 19.
G. S. 129, § 76.

‡ § SECTION 90. If the defendant in an action for slander or for publishing a libel justifies that the words spoken or published were true, such allegation, although not maintained by the evidence, shall not of itself be proof of the malice alleged in the declaration.

P. S. 167, § 79.

15 Mass. 48.

1 Pick. 1.

Truth of libel
admissible.
1855, 326.
G. S. 129, § 77.
P. S. 167, § 80.
124 Mass. 338.
127 Mass. 320.

‡ § SECTION 91. The defendant in an action for writing or for publishing a libel may introduce in evidence the truth of the matter contained in the publication charged as libellous; and the truth shall be a justification unless actual malice is proved.

133 Mass. 471.

151 Mass. 127.

176 Mass. 270.

Retraction of
libel.
1835, 441.
1897, 525, § 1.

‡ § SECTION 92. If, in an action for libel, the defendant, before the answer is required to be filed therein, gives notice in writing to the plaintiff or to his attorney of his intention to publish a retraction of the libel, accompanied by a copy of the retraction which he intends to publish, he may prove such publication in mitigation of damages. If, upon such notice, the plaintiff does not accept the offer of retraction, the defendant may prove in mitigation of damages his offer to publish such retraction and that the offer was not accepted, and that the alleged libel was published in good faith and without actual malice; and unless the plaintiff proves actual malice or want of good faith, or a failure either to retract or offer to retract as aforesaid, he shall recover damages only for the actual injury sustained; but in no action of libel shall exemplary or punitive damages be allowed.

Evidence of
other damages.
1897, 525, § 2.
1901, 322.

‡ § SECTION 93. In an action for libel, the defendant may allege and prove in mitigation of damages that the plaintiff has already recovered damages for, or has received or has agreed to receive compensation in respect of, substantially the same libel as that for which such action was brought. In an action for libel or slander, he may introduce in evidence, in mitigation of damages and in re-

7 buttal of evidence of actual malice, acts of the plaintiff which create
8 a reasonable suspicion that the matters charged against him by the
9 defendant are true.

1 SECTION 94. If two or more actions for substantially the same
2 libel, brought by the same plaintiff, are pending, either in the same
3 or in different counties, any justice of the court in which the actions
4 are pending may in his discretion make an order that some or all
5 of them be tried together. A separate verdict, or, if the action is
6 tried without a jury, a separate finding, shall be rendered in each
7 action, and judgment shall be rendered in each as if it had been
8 tried separately. If the plaintiff recovers judgment in two or more
9 actions, the court shall make an order for the apportionment of
10 costs between the defendants.

Consolidation
of actions for
libel.
1897, 525, § 3.

1 † SECTION 95. In an action upon a judgment obtained by de-
2 fault and without the knowledge of the defendant, brought within six
3 years after the rendition thereof, the court may, in its discretion,
4 and upon terms, allow the defendant to show in defence any pay-
5 ment, satisfaction or extinguishment of the claim, prior to the ob-
6 taining of such judgment, or any matter of fraud, which in either
7 case he might have shown upon a writ of review in the original suit.

Evidence of
payment, etc.,
in action on
judgment by
default.
1859, 185.
G. S. 129, § 78.
P. S. 167, § 81.
12 Allen, 97.

Appeals to the Full Court.

1 SECTION 96. A party who is aggrieved by a judgment of the
2 superior court upon a demurrer which alleges that the facts stated
3 in the pleadings demurred to do not in law support or answer
4 the action, if such pleadings are not amended, or a party who is
5 aggrieved by any other judgment founded upon matter of law
6 apparent on the record in any proceeding, except a judgment ren-
7 dered upon an answer in abatement or upon a motion to dismiss
8 for defect of form of process or except a judgment rendered by three
9 justices under the provisions of section five of chapter one hundred
10 and fifty-seven, may appeal therefrom to the supreme judicial court.
11 An issue of law joined in the superior court shall not be waived by
12 consent of parties after such appeal has been entered in the su-
13 preme judicial court, but that court may, for good cause, allow
14 the parties to withdraw or amend their pleadings, and, if they
15 result in an issue of fact, the case shall be remanded to the superior
16 court for trial; but no execution shall issue upon the judgment
17 appealed from, unless the appeal is waived, until the case shall have
18 been so remanded. An appeal from a judgment rendered upon a
19 demurrer or upon a case stated shall be claimed within thirty days
20 after the entry of such judgment.

Appeal to full
court.
1820, 79, § 4.
1835, 101, § 1.
R. S. 82, §§ 6, 10.
1838, 165, § 1.
1839, 161.
1840, 87, §§ 4, 5.
1851, 233, § 33.
1852, 312, § 23.
1855, 449, §§ 5, 6.
1859, 186, §§ 26,
27.
G. S. 114, § 10;
129, § 64.
P. S. 152, § 10;
167, § 67.
1891, 227, § 2.
1899, 357.
13 Allen, 393.
99 Mass. 634.
106 Mass. 343.
116 Mass. 223.
117 Mass. 67.
121 Mass. 402.
122 Mass. 443.
126 Mass. 258.
134 Mass. 338.
147 Mass. 572.
150 Mass. 550.
153 Mass. 6.
156 Mass. 348,
522.
157 Mass. 386.

160 Mass. 415.

170 Mass. 569.

Appeals to the Superior Court.

1 ‡ SECTION 97. A party who is aggrieved by the judgment of a
2 police, district or municipal court or trial justice in a civil action,
3 except a judgment rendered in accordance with the provisions of
4 section forty-two of chapter one hundred and sixty, may, within
5 twenty-four hours after the entry of the judgment, appeal there-
6 from to the superior court. In such case, no execution shall issue

—to superior
court.
1697, 8, § 1.
1783, 42, § 6.
1825, 89, § 2.
1831, 70, § 1.
R. S. 85, § 13;
87, § 36; 104, § 8.
G. S. 116, § 32;
120, § 25.

1876, 196, §§ 1, 2. on the judgment appealed from. The case shall be entered in the 7
P. S. 154, § 39; superior court for the same county at the return day next after the 8
155, § 28; appeal has been taken and shall be there tried and determined as 9
1885, 384, § 5. if it had been originally commenced there. 10
1893, 396, § 24.
1894, 431.

11 Cush. 80.	9 Gray, 49.	125 Mass. 49.	171 Mass. 292, 444.
1 Gray, 600.	12 Gray, 430.	139 Mass. 126.	172 Mass. 37.
2 Gray, 555.	13 Allen, 78.	165 Mass. 238.	174 Mass. 327.

Appeal bond. † SECTION 98. No appeal, other than an appeal by a county, 1
1862, 217, § 6. city, town or other municipal corporation, from a judgment of a 2
1877, 236, § 1. police, district or municipal court in any civil action or proceeding, 3
1878, 188, § 2. except an action of summary process under the provisions of chap- 4
P. S. 154, § 52; ter one hundred and eighty-one, shall be allowed, except as pro- 5
155, § 29. vided in sections one hundred and one hundred and one, unless the 6
1882, 95. appellant, within twenty-four hours after the entry of judgment, or 7
1893, 396, § 25. within such further time as the justice or clerk for cause shown may 8
1894, 431. allow, files a bond executed by him or by his attorney of record on 9
1896, 355. his behalf, payable to the appellee in such reasonable sum and with 10
133 Mass. 464. such surety or sureties as may be approved by the appellee or by 11
136 Mass. 560. the justice or clerk, conditioned to enter and prosecute his appeal 12
137 Mass. 581. with effect, and to satisfy any judgment for costs which may be en- 13
140 Mass. 235. tered against him in the superior court upon said appeal within 14
141 Mass. 154. thirty days after the entry thereof. 15
218.
142 Mass. 186.
143 Mass. 76.
146 Mass. 324.
150 Mass. 115.
283.

Appellant to recognize. * SECTION 99. No appeal other than an appeal by a county, 1
1697, 8, § 1. city, town or other municipal corporation, from a judgment of a 2
1783, 42, § 6. trial justice in any civil action or proceeding, except an action of 3
R. S. 85, § 14. summary process under the provisions of chapter one hundred and 4
G. S. 120, § 26. eighty-one, shall be allowed, except as provided in the two fol- 5
1877, 236, § 1. lowing sections, unless the appellant, within twenty-four hours 6
P. S. 155, § 29. after the entry of judgment, or within such further time as the 7
1896, 355. trial justice for cause shown may allow, recognizes to the appellee 8
5 Allen, 388. with sufficient surety or sureties, who shall be approved by the ap- 9
7 Allen, 198. pellee or by the justice, in a reasonable sum to be fixed by the 10
133 Mass. 464. justice or approved by the appellee, conditioned to enter and prose- 11
136 Mass. 560. cute his appeal with effect, and to satisfy any judgment for costs 12
143 Mass. 76, which may be entered against him in the superior court upon said 13
423. appeal within thirty days after the entry thereof. In determining 14
145 Mass. 537. the sufficiency of the sureties upon such recognizance, the justice 15
may examine upon oath the persons who are offered as sureties and 16
all other witnesses who are produced by either party. 17

Deposit in lieu of bond. ‡ SECTION 100. The appellant or any person in his behalf may, 1
1880, 20, §§ 1-3. instead of filing a bond or entering into a recognizance as provided 2
P. S. 154, § 39; in the two preceding sections, deposit with the clerk, or with the 3
155, §§ 30-32. justice if there is no clerk, or with the trial justice, within the time 4
1893, 396, §§ 26-28. required for filing a bond, a reasonable amount, to be fixed by the 5
1894, 431. clerk or justice or trial justice, as security for the prosecution of 6
160 Mass. 415. the appeal and the payment of costs. A certificate of such deposit 7
shall be issued to the depositor by the clerk or justice or trial 8
justice, and the deposit shall be transmitted by him with the papers 9
to the clerk of the superior court, who shall thereupon deliver a 10
receipt therefor to such clerk or justice or trial justice and shall 11
hold such deposit until the final disposition of the case, when he 12
shall pay it, or any part thereof, to the appellee for his costs, or to 13

14 the depositor thereof, as the court may order. The superior court
15 may give directions as to the manner of keeping such deposit.

1 † SECTION 101. If an appeal is claimed by the plaintiff in an
2 action of replevin, or if an appeal is claimed, or if the removal of
3 an action is requested, under the provisions of section nineteen of
4 chapter one hundred and sixty-one, by a defendant who has given
5 a bond according to law to dissolve an attachment, no bond,
6 recognizance or deposit shall be required. 150 Mass. 283.

No appeal
bond required,
when.
1862, 217, § 5.
1880, 20, § 4.
P. S. 155, § 33.
1890, 224.
1893, 396, § 29.
1894, 431.
141 Mass. 154.

1 † SECTION 102. When an appeal is taken from a judgment of
2 a police, district or municipal court, the clerk or, if there is no clerk,
3 the justice shall transmit to the clerk of the superior court the
4 original writ or process, all papers filed in the case, all bonds, and
5 a brief certificate of the proceedings, which shall be there entered
6 by the appellant. 138 Mass. 349.

Transmission
of papers.
1862, 217, § 1.
1876, 60.
P. S. 154, § 40.
1893, 396, § 30.
1894, 431.
12 Cush. 133.
126 Mass. 233,
400.

1 * SECTION 103. When an appeal is taken from a judgment of a
2 trial justice, the appellant shall enter in the superior court a copy of
3 the record and produce copies of all papers filed in the case, except
4 that when depositions or other written evidence or documents are
5 so filed the originals shall be produced. 12 Cush. 133. 137 Mass. 183. 138 Mass. 349.

Production of
papers on
appeal.
1897, 8, § 2.
1783, 42, § 6.
R. S. 85, § 15.
G. S. 120, § 27.
P. S. 155, § 34.

1 † SECTION 104. When such appeal is taken from the judgment
2 of a police, district or municipal court or trial justice, the names
3 of all the parties thereto, the nature of the action or proceeding,
4 the doings of the court thereon, the final disposition thereof and
5 the amount of costs taxed shall be entered on the docket; and no
6 other record thereof shall be required.

Records in
lower court of
cases appealed.
1862, 217, § 2.
1876, 60.
P. S. 154, § 41.
1893, 396, § 31.
1894, 431.

Exceptions or Report.

1 § SECTION 105. A justice of the supreme judicial court or of the
2 superior court, after verdict, or after a finding of the facts by the
3 court, and a majority of the justices of the superior court sitting for
4 the trial of a cause under the provisions of section five of chapter
5 one hundred and fifty-seven, may report the case for determination
6 by the full court. If the justice is of opinion that an interlocu-
7 tory finding or order made by him ought to be determined by the
8 full court before any further proceedings in the trial court, he may
9 report the case for that purpose and stay all further proceedings
10 except such as are necessary to preserve the rights of the parties. 141 Mass. 577. 167 Mass. 473. 171 Mass. 201.

Report.
1859, 196, § 32.
G. S. 115, § 6.
1869, 438, § 1.
1878, 231, § 1.
P. S. 153, § 6.
1887, 332, § 4.
1891, 227, § 2.
1900, 311.
1 Allen, 388.
103 Mass. 346.
113 Mass. 290.
115 Mass. 129,
340.
125 Mass. 49,
404.
130 Mass. 443.

1 § SECTION 106. Exceptions may be alleged by any party who
2 is aggrieved by an opinion, ruling, direction or judgment of the
3 supreme judicial court or of the superior court which is rendered
4 upon any matter of law in any civil cause, according to the course
5 of the common law or otherwise, tried by a jury or heard by the
6 court, or upon a motion for a new trial, except in actions tried by
7 three justices of the superior court under the provisions of section
8 five of chapter one hundred and fifty-seven and except upon an-
Exceptions.
1893, 94, § 5.
1894, 105, § 5.
1817, 185, § 5.
1820, 79, § 5.
1835, 101, § 2.
R. S. 81, § 28;
82, § 12.
1840, 87, §§ 4, 5.
1857, 267, § 2.
1859, 196, § 27.
G. S. 107, § 13;
115, § 7; 129,
§ 67.

1863, 180, § 2.
1879, 4.
1880, 118.
P. S. 146, § 34;
153, §§ 8, 9; 167,
§ 70.
1887, 332, § 4.
1901, 227, § 2.
1905, 153, § 1.
5 Met. 287.
11 Gray, 400.
1 Allen, 275.
388, 531.
3 Allen, 212.
6 Allen, 150.
10 Allen, 248.
12 Allen, 199.
14 Allen, 495.
99 Mass. 475.

swers in abatement or motions to dismiss for defect of form of
process. The exceptions shall be reduced to writing and filed with
the clerk, and notice thereof shall be given to the adverse party, in
civil cases tried by a jury, within twenty days after the verdict is
rendered, and in cases tried without a jury, within twenty days
after the notice of the decision has been received, unless further
time is allowed by the court. The clerk, immediately on the filing
of the exceptions, shall present them to the court, and if, upon ex-
amination thereof by the presiding justice, after hearing the parties,
the exceptions are found conformable to the truth, they shall be
allowed by him.

106 Mass. 51.	124 Mass. 353.	141 Mass. 181.	151 Mass. 158.	167 Mass. 417.
110 Mass. 497.	125 Mass. 203, 368.	145 Mass. 234.	156 Mass. 522.	168 Mass. 303.
115 Mass. 129.	128 Mass. 349.	147 Mass. 159.	159 Mass. 210.	170 Mass. 569.
123 Mass. 579.	134 Mass. 189.	150 Mass. 550.	160 Mass. 256.	174 Mass. 580.

Allowance of
exceptions.
1859, 196, § 27.
G. S. 115, § 8.
P. S. 153, § 10.
124 Mass. 292.
127 Mass. 161.

§ SECTION 107. Exceptions shall be restored to the files of the
court with a certificate, signed by the justice, allowing or disallow-
ing them. If they are not so restored within ten days after they
have been presented to him, the justice shall also certify the reason
therefor.

— by another
justice.
1882, 239.
1894, 412.

§ SECTION 108. If the justice who presides at a trial at which
exceptions have been taken fails, by reason of physical or mental
disability, death or resignation, to sign or return them, any other
justice of the same court may examine and allow or disallow
them.

Frivolous ex-
ceptions.
1804, 105, § 5.
R. S. 81, § 29.
G. S. 115, § 10.
P. S. 153, § 12.
1891, 362.
156 Mass. 61.

§ SECTION 109. If the justice who presides at the trial of a civil
cause finds that the exceptions taken therein are immaterial, frivo-
lous or intended for delay, judgment may be entered and execution
awarded or stayed, upon terms, notwithstanding the allowance of the
exceptions. If execution is not awarded, any security which has
been taken shall stand as if no judgment had been entered until an
order is made for final judgment.

Establishment
of exceptions
disallowed.
R. S. 81, § 28.
1851, 261, §§ 1, 2.
1859, 196, § 29.
G. S. 115, § 11.
P. S. 153, § 13.
1882, 239.
1894, 412.
6 Allen, 557.
98 Mass. 34.
103 Mass. 534.
116 Mass. 432.
117 Mass. 68.
119 Mass. 417.
127 Mass. 162.

§ SECTION 110. If the presiding justice, or another justice of the
same court, under the provisions of section one hundred and eight,
disallows or fails to sign and return the exceptions or alters any
statement therein, and either party is aggrieved thereby, the truth
of the exceptions presented may be established before the full court
upon petition stating the grievance, and thereupon, the truth of the
exceptions being established, they shall be heard, and the same
proceedings taken, as if the exceptions had been duly allowed and
entered. The supreme judicial court shall make rules for settling
the truth of exceptions alleged and not allowed.

130 Mass. 6.	155 Mass. 232.	168 Mass. 304.
144 Mass. 71.	163 Mass. 536.	174 Mass. 253.

Transcripts of
evidence.
1895, 153, § 2.
1896, 451.

§ SECTION 111. The presiding justice may order the excepting
party in civil cases to provide him with a transcript of the evidence
and of the instructions to the jury, or such portion thereof as he
shall designate, written out by the official stenographer from his
notes, within such time, not less than ten days after the date of the
order, as the presiding justice designates.

New Trials.

1 § SECTION 112. The courts may, at any time before judgment,
2 set aside the verdict in a civil action and order a new trial for any
3 cause for which a new trial may by law be granted; but a verdict
4 shall not be set aside except upon a motion in writing by a party
5 to the cause, stating the reasons relied upon in its support, filed and
6 heard after notice to the adverse party according to the rules of the
7 court. A verdict shall not be set aside as excessive until the pre-
8 vailing party has first been given an opportunity to remit so much
9 thereof as the court adjudges is excessive.

New trial.
1820, 79, § 7.
R. S. 82, § 19.
1855, 185.
1859, 196, § 32.
G. S. 115, § 6.
P. S. 153, § 6.
1897, 472.
9 Allen, 539.
98 Mass. 36.
134 Mass. 189.
137 Mass. 315.
138 Mass. 146.
162 Mass. 397.
163 Mass. 143.

1 § SECTION 113. A new trial may be granted, upon motion, for a
2 mistake of law or for newly discovered evidence in a case heard by
3 the court. When a decision has been rendered in such a case, the
4 clerk shall notify the parties, and a motion for a new trial may be
5 filed within three days after such notice has been received or within
6 such further time as the court may allow.

—in jury
waived cases.
1857, 267, § 2.
G. S. 129, § 67.
1879, 4.
P. S. 153, § 9;
167, § 70.
148 Mass. 522.

1 § SECTION 114. If a new trial is refused, the court may impose
2 terms upon the moving party, which shall be taxed as costs.

Terms on re-
fusal of new
trial.

1876, 74.

P. S. 153, § 7.

Affirmance of Judgment upon Non-Entry of Appeal or Exceptions.

1 § SECTION 115. If an appellant or an excepting party or if the
2 plaintiff in a case reported, at law, in equity or in probate proceed-
3 ings, neglects to enter the appeal, exceptions or report in the
4 supreme judicial court or to take the necessary measures by order-
5 ing proper copies to be prepared or otherwise for the hearing of
6 the case, or if an excepting party neglects to provide a transcript
7 of the evidence or of the instructions to the jury within the time
8 ordered by the justice under the provisions of section one hundred
9 and eleven, the court in which the appeal was taken or by which
10 the exceptions were allowed or the case reported may, upon the
11 application of the adverse party and after notice to all parties in-
12 terested, order that the appeal be dismissed, the exceptions over-
13 ruled or the report discharged, and that the judgment, opinion,
14 ruling, order or decree appealed from, or excepted to, be affirmed.

Affirmance of
judgment by
court appealed
from.
1820, 79, §§ 4, 5.
R. S. 82, § 10.
G. S. 112, § 16.
P. S. 150, § 16.
1888, 94.
1895, 153, § 2.
1896, 451.
1900, 372, § 1.
3 Cush. 57.
150 Mass. 56, 57.
160 Mass. 444.
161 Mass. 593.
177 Mass. 525.

Waiver of Appeal or Exceptions.

1 ‡ § SECTION 116. A waiver in writing of an appeal or of excep-
2 tions in any case at law or in equity may be filed and acted upon in
3 the court in which they were taken at any time before the entry
4 thereof in the appellate court.

Waiver of
appeal or
exceptions.
1900, 372, § 2.

Transmission of Papers.

1 § SECTION 117. Copies and papers relating to a question of law
2 arising in the supreme judicial court or the superior court upon
3 appeal, exception, reservation, report or otherwise shall be pre-
4 pared by the clerk of the court, and shall thereupon be transmitted
5 to and entered in the docket of the full court for the proper county
6 as soon as may be after such question of law has been reserved and

Entry of ex-
ceptions, etc.,
in law docket.
1859, 196, §§ 26,
27, 34, 44.
G. S. 112, § 33;
115, § 12.
1864, 111.
P. S. 153, § 15.
6 Allen, 240.

103 Mass. 533.
114 Mass. 97,
514.
116 Mass. 333.
133 Mass. 536.

duly made a matter of record in the court in which the action is pending. The entry thereof shall not, except in equity, transfer the case, but only the question to be determined. 154 Mass. 109.

Arrest of Judgment.

Arrest of judgment.

1851, 233, § 32.
1852, 312, § 22.
G. S. 129, § 79.
P. S. 167, § 82.
1 Gray, 172.
7 Gray, 543.
13 Gray, 392.
15 Gray, 52.
104 Mass. 373.
118 Mass. 569.

‡ § SECTION 118. A judgment shall not be arrested for a cause existing before the verdict, unless such cause affects the jurisdiction of the court. After the defendant has appeared and answered to the merits of the action, no defect in the writ or other process by which he has been brought before the court, or in the service thereof, shall be considered to affect the jurisdiction of the court.

127 Mass. 321.

144 Mass. 472.

150 Mass. 453.

162 Mass. 339.

General Provisions.

Suggestions entered on record.
1826, 70.
R. S. 93, § 24.

‡ § SECTION 119. The court may allow suggestions as to changes which occur in an action after its commencement to be entered on the record in such form as it shall approve.

G. S. 129, § 80.

P. S. 167, § 83.

Judgment after exceptions.
1874, 248, § 2.
P. S. 153, § 14.
123 Mass. 419.

§ SECTION 120. The justice who presides at the trial of a cause with or without a jury, in which exceptions have been allowed, an appeal taken or a case reported, may, upon the application of the excepting party, of the appellant, or of either party upon a case reported, allow the verdict or judgment to be entered, altered or modified, or the damages to be increased or reduced, in such manner as the full court shall determine. In such case, the bill of exceptions, record or report shall state the permission given, and the full court shall make the proper order, direction, judgment or decree for the further disposition of the case.

Identification of cause of action, amendment, notice to parties, appeal, etc.

1851, 233, § 43.
1852, 312, § 33.
G. S. 129, § 82.
P. S. 167, § 85.
6 Cush, 513.
7 Gray, 540.
3 Allen, 528.
5 Allen, 322.
7 Allen, 202.
125 Mass. 72.
127 Mass. 599.
136 Mass. 335.
142 Mass. 124.
150 Mass. 473.
151 Mass. 454.
170 Mass. 260,
262.

‡ § SECTION 121. The cause of action shall be considered to be the same for which the action was brought, if the court finds that it is the cause of action relied on by the plaintiff when the action was commenced, however the same may be misdescribed; and the allowance by the court of an amendment shall be conclusive evidence of the identity of the cause of action. But no subsequent attaching creditor or purchaser of property attached or bail or any person other than the parties to the record shall be bound by such allowance unless he has had due notice of the application for leave to amend and an opportunity to be heard thereon, according to an order of notice to that effect to be issued by the court upon application of the plaintiff, and such third parties shall have the right of exception or appeal.

174 Mass. 362.

Affidavit, when corporation is a party.
1852, 312, § 89.
G. S. 129, § 83.
P. S. 167, § 86.

‡ § SECTION 122. If a corporation is a party to an action or proceeding under the provisions of this chapter, all precepts, answers, replications or other papers requiring the signature or oath of the party may be signed or sworn to in behalf of the corporation by an officer or agent thereunto specially authorized.

Representative or corporate capacity admitted, unless, etc.
1881, 113.
P. S. 167, § 87.

‡ § SECTION 123. If it is alleged in an action at law or suit in equity that a party is an executor, administrator, guardian, trustee, assignee, conservator or receiver or is a corporation, such allegation shall be taken as admitted unless the party controverting it files in

5 court, within the time allowed for the answer thereto, or within
6 ten days after the filing of the paper which contains such allegation,
7 a special demand for its proof.

133 Mass. 358.
160 Mass. 1.

1 SECTION 124. Sections seven, ten, eleven, sixteen, seventeen,
2 twenty-two, twenty-eight, thirty-two, thirty-six, thirty-nine to
3 forty-eight, inclusive, fifty to fifty-four, inclusive, fifty-six to sixty-
4 seven, inclusive, sixty-nine to seventy-one, inclusive, seventy-four
5 to seventy-seven, inclusive, so much of section seventy-eight as
6 relates to agreements of parties, seventy-nine to eighty-three, inclu-
7 sive, eighty-five, eighty-seven to eighty-nine, inclusive, one hun-
8 dred and five to one hundred and twenty-three, inclusive, and one
9 hundred and thirty shall apply to real or mixed actions, and no
10 other sections shall so apply unless such actions are expressly
11 named therein.

Sections appli-
cable to real
and mixed ac-
tions, except,
etc.
1851, 233, § 65.
1852, 312, § 51.
G. S. 129, § 84.
1881, 113.
P. S. 167, § 88.
See §§ noted
thus, §.

1 SECTION 125. Sections one to six, inclusive, eight to twelve, in-
2 clusive, twenty-three, twenty-nine, thirty, thirty-seven to forty-two,
3 inclusive, forty-four to forty-six, inclusive, forty-eight, fifty-one,
4 fifty-three, fifty-four, fifty-seven to sixty-eight, inclusive, seventy-
5 two, seventy-three, seventy-eight, eighty-five to ninety-three, in-
6 clusive, ninety-seven, one hundred, one hundred and one, one
7 hundred and four, one hundred and sixteen, one hundred and eight-
8 een, one hundred and nineteen, one hundred and twenty-one to
9 one hundred and twenty-three, inclusive, and one hundred and thirty
10 shall apply to civil actions before police, district or municipal courts
11 and trial justices.

— to civil
actions before
police, etc.,
courts and trial
justices.
1851, 225, § 1.
1852, 312, § 87.
G. S. 129, § 85.
1862, 20.
1881, 113.
P. S. 167, § 89.
1893, 396, § 23.
6 Allen, 26.
See §§ noted
thus, †.

1 SECTION 126. Sections thirteen to twenty, inclusive, twenty-
2 two, twenty-four to twenty-seven, inclusive, thirty-one, thirty-three
3 to thirty-six, inclusive, forty-seven, forty-nine, fifty, ninety-five,
4 ninety-eight, one hundred and two, in addition to those named in
5 the preceding section shall apply to civil actions before any police,
6 district or municipal court.

— to civil
actions before
police, etc.,
courts.
1893, 396, § 23.
See §§ noted
thus, †.

1 SECTION 127. Sections twenty-one, ninety-nine and one hundred
2 and three, in addition to those named in section one hundred and
3 twenty-five, shall apply to civil actions before trial justices.

— to civil
actions before
trial justices.
See §§ noted
thus, *.

1 SECTION 128. Sections sixty-nine to seventy-one, inclusive, and
2 eighty-four of this chapter, in addition to those named in sections
3 one hundred and twenty-four and one hundred and twenty-five,
4 shall apply to civil actions before the municipal court of the city
5 of Boston.

1893, 396, § 23.

1894, 431, § 2.

See §§ noted thus, ‖.

Other sections
to apply to
civil actions
before the mu-
nicipal court
of the city of
Boston.
1867, 355, § 2.
P. S. 167, § 91.

1 SECTION 129. Except as provided in the four preceding sec-
2 tions, the provisions of this chapter shall not apply to actions before
3 police, district or municipal courts or trial justices.

G. S. 129, § 85.

P. S. 167, § 92.

Certain sec-
tions not to
apply to ac-
tions before
police, etc.,
courts and trial
justices.

Forms.

1 † § SECTION 130. The forms of pleadings heretofore established
2 or used in this commonwealth may continue to be used in the
3 several courts, subject to be changed by general rules of the supreme
4 judicial court.

Forms author-
ized.
1851, 233, § 119.
1852, 312, § 84.
G. S. 129, § 87.
P. S. 167, § 94.

CHAPTER 174.

OF SET-OFF AND TENDER

SECTIONS 1-11. — Set-off.

SECTIONS 12-14. — Tender.

SET-OFF.

Set-off, when
allowed.
1730-1, 7, § 1.
1732-3, 12, § 1.
1734-5, 4.
1742-3, 19, § 1.
1784, 28, § 12.
1793, 75, § 4.
R. S. 96, §§ 1-5,
7.
G. S. 130, §§ 1-5,
7.
P. S. 168, §§ 1-5,
7.
17 Mass. 66.

SECTION 1. If at the commencement of an action upon a judgment or upon a contract, express or implied, for property sold, for money paid, for money had and received, for services performed and for an amount which is liquidated or may be ascertained by calculation, the defendant has in his own right a claim against the plaintiff such as is hereinbefore mentioned or such a claim which has been assigned to him with notice thereof to the plaintiff, it may be set off against the plaintiff's claim as hereinafter provided.

5 Pick. 223.	3 Allen, 111.	119 Mass. 397.	130 Mass. 352,
3 Met. 520.	5 Allen, 36.	122 Mass. 296.	424, 436.
4 Met. 430.	9 Allen, 192.	123 Mass. 598.	131 Mass. 277.
9 Met. 341.	10 Allen, 482.	124 Mass. 395, 470.	137 Mass. 181.
11 Met. 136.	103 Mass. 557.	127 Mass. 394.	152 Mass. 108, 260.
13 Met. 132.	114 Mass. 24, 358.	129 Mass. 234.	153 Mass. 544.

— of bonds,
etc.

R. S. 96, § 6.
G. S. 130, § 6.
P. S. 168, § 6.

SECTION 2. If the claim which is set off is founded on a bond or other contract having a penalty, no more shall be set off than the amount equitably due.

4 Met. 430.

Several plain-
tiffs or defend-
ants.

R. S. 96, §§ 8, 9.
G. S. 130, §§ 8, 9.
P. S. 168, §§ 8, 9.
11 Mass. 140.
6 Pick. 352.
1 Met. 80.
5 Allen, 371.
105 Mass. 215.

SECTION 3. If there are several plaintiffs or defendants, the claim set off shall be due from all of the plaintiffs jointly and to all of the defendants jointly, except that in an action by or against partners, one of whom is a dormant partner, a claim due to or from the person with whom the contract was made may be set off as though such dormant partner were not a party to the action.

168 Mass. 537.

172 Mass. 516.

Assignment of
claim.

R. S. 96, § 10.
G. S. 130, § 10.
P. S. 168, § 10.
12 Mass. 193,
195.

SECTION 4. If at the commencement of an action the defendant has notice that the claim declared on has been assigned, he shall not set off a claim against the original creditor which was acquired after such notice.

14 Mass. 291.

129 Mass. 234.

151 Mass. 338.

Actions by
trustee, etc.
R. S. 96, § 11.
G. S. 130, § 11.
P. S. 168, § 11.
8 Pick. 342.

SECTION 5. In an action brought by one person in trust or for the use or benefit of another, the defendant may set off a claim against the beneficiary.

7 Cush. 217.

125 Mass. 571.

135 Mass. 558.

— by or against
executors or
administra-
tors.

R. S. 96, §§ 12,
14, 15.
G. S. 130, §§ 12,
14, 15.
P. S. 168, §§ 12,
14, 15.
3 Pick. 452.
9 Pick. 37.
2 Met. 255.

SECTION 6. In an action by or against an executor, administrator or other person in a representative capacity, the defendant may set off a claim due to or from the testator, intestate or person represented, respectively; but he shall not set off a claim due in his own right to or from the executor, administrator or other person who sues or defends in a representative capacity, nor a claim which did not belong to him at the death of the testator or intestate.

6 Met. 537.
9 Met. 509.

4 Gray, 286.
7 Gray, 170.

11 Allen, 101.
146 Mass. 333.

151 Mass. 204.
153 Mass. 544.

1 SECTION 7. If, upon such set-off against an executor or admin- Form of judg-
2 istrator, a balance is found due to the defendant, the judgment ment.
3 therefor shall be in the same form and have the same effect as if R. S. 96, § 13.
4 the action had been commenced by the defendant. G. S. 130, § 13.
P. S. 168, § 13.

1 SECTION 8. If the defendant relies on a claim of set-off, he Declaration in
2 shall file a declaration in set-off which, with the subsequent plead- set-off.
3 ings relative thereto, shall be governed by the same rules as if an 1730-1, 7, § 2.
4 action had been brought thereon; and the plaintiff shall be entitled 1734-5, 4, § 2.
5 to every defence thereto, which he might have had in an action 1742-3, 19, § 2.
6 against himself. After such declaration in set-off has been filed, 1784, 29, § 12.
7 the plaintiff shall not discontinue his action without the consent of 1793, 75, § 4.
8 the defendant. R. S. 96, §§ 16,
17, 19, 24.
1851, 233, § 47.
1852, 312, § 37.
G. S. 130, §§ 16,
17, 21.

P. S. 168, §§ 16, 17, 21.
3 Met. 411.

2 Gray, 260.
7 Gray, 194.

5 Allen, 37.
9 Allen, 192.

112 Mass. 22.
116 Mass. 284.

1 SECTION 9. In the supreme judicial court and the superior court, Filing of dec-
2 a declaration in set-off shall be filed with the answer. In the laration.
3 municipal court of the city of Boston, it may be filed at any time 1730-1, 7, § 2.
4 during the sitting at which the writ is returnable, or within such 1734-5, 4, § 2.
5 further time as the court may allow. In other municipal courts 1742-3, 19, § 2.
6 and in police and district courts or before a trial justice, it shall 1784, 29, § 12.
7 be filed when the action is entered, or within such further time as 1793, 75, § 4.
8 the court or trial justice allows. R. S. 96, §§ 16,
23,
1851, 233, § 47.
1852, 312, § 37.
G. S. 130, §§ 16,
22.

1870, 330, § 3.

1878, 170.

P. S. 168, §§ 16, 22.

126 Mass. 399.

177 Mass. 397.

1 SECTION 10. The provisions of law relative to the limitation of Limitations in
2 actions shall apply to declarations in set-off, and the time limited bar.
3 shall be computed from the commencement of the action by the 1793, 75, § 4.
4 plaintiff. The provisions of this section shall apply to actions 1834, 182, § 4.
5 brought by the commonwealth or for its benefit. R. S. 96, § 20;
120, § 19.
G. S. 130, § 18;
155, §§ 18, 19.

P. S. 168, § 18;
197, §§ 20, 21.

18 Pick. 521.
4 Gray, 393.

11 Allen, 101.
107 Mass. 285.

135 Mass. 558.

1 SECTION 11. Judgment in an action in which a declaration in Judgment.
2 set-off has been filed shall be rendered in favor of the party to 1730-1, 7, § 1.
3 whom a balance is found due for the amount of such balance, not 1734-5, 4, § 1.
4 exceeding the jurisdiction of the court or trial justice, with costs. 1742-3, 19, § 1.
5 If the amounts found due to the respective parties are equal, judg- 1784, 29, § 12.
6 ment shall be rendered in favor of each for such amounts and an R. S. 96, §§ 21-
7 entry shall be made that the judgments are satisfied by the set-off, 23.
8 with costs to either party, or without costs, as the court orders. G. S. 130, §§ 19,
20, 22.
1878, 170.
P. S. 168, §§ 19,
20, 22.
4 Gray, 511.
130 Mass. 447.

TENDER.

1 SECTION 12. The payment or tender of payment of the whole Payment or
2 amount due on a contract for the payment of money after it is tender after
3 due and payable and before action is commenced shall, if pleaded, day, etc.
4 have the same effect as if made at the time provided in the contract. 1830, 85, §§ 1, 2;
128.
5 Such payment or tender may also be made after action has been R. S. 100, §§ 14-
6 commenced and at least four days before the return day of the writ, 16.
G. S. 130, §§ 23,
25.
P. S. 168, §§ 23-
25.

17 Pick. 366.
11 Cush. 26.
10 Gray, 351.
11 Allen, 527.
98 Mass. 528.
130 Mass. 277.

with costs to the time of payment or tender. The tender last mentioned may be made to the plaintiff or to his attorney in the action, and, if not accepted, the defendant may avail himself of the tender in defence in like manner as if made before the commencement of the action, bringing into court the amount so tendered.

Acceptance.
1830, 85, § 2.
R. S. 100, § 17.
G. S. 130, § 26.
P. S. 168, § 26.

SECTION 13. If such tender is accepted, the plaintiff or his attorney shall, at the request of the defendant, sign a certificate or notice thereof to the officer who has the writ, and deliver it to the defendant; and if any further costs are incurred for a service made by the officer after the tender and before he receives notice thereof, the defendant shall pay the same to the officer, or the tender shall be invalid.

Land damage
and liens.
1878, 205.
P. S. 168, § 27.

SECTION 14. A person or corporation against whom damages are claimed for taking or injuring land by authority of law, or upon whose property a lien is claimed, may make a tender or an offer of judgment in any proceedings relative thereto in like manner and with like effect as in matters of contract; but if an assessment of damages is required before applying for a jury, no tender or offer of judgment shall be made until after such assessment, nor of less amount. The provisions of this section shall not apply to cases under the provisions of chapter one hundred and ninety-six.

CHAPTER 175.

OF WITNESSES AND EVIDENCE.

SECTIONS 1-24. — Witnesses.

SECTIONS 25-46. — Depositions.

SECTIONS 47-64. — Depositions to Perpetuate Testimony.

SECTIONS 65-67. — Dying Declarations and Declarations of Deceased Parties.

SECTION 68. — Stenographic Transcripts.

SECTION 69. — Evidence in Proceedings in Equity.

SECTION 70. — Proof of Attested Instruments.

SECTIONS 71-78. — Proof of Statutes, Laws, etc.

WITNESSES.

Witnesses,
how summoned.
1701-2, § 4.
1743-4, 24, § 1.
1783, 42, § 5; 51,
§ 2.
1784, 28, §§ 5, 6.
1791, 53, § 6.
R. S. 85, § 38;
94, § 1; 96, § 28.
G. S. 131, § 1.
P. S. 169, § 1.
1884, 247.
1885, 141.
1889, 197.
1896, 476.

SECTION 1. A clerk of a court of record, a justice of the peace or a special commissioner may issue summonses for witnesses in all cases pending before courts, magistrates, auditors, referees, arbitrators or other persons authorized to examine witnesses; but a justice of the peace or special commissioner shall not issue summonses for witnesses in criminal cases except upon the request of the attorney general, district attorney or other person who acts in the case in behalf of the commonwealth or of the defendant. If the summons is issued at the request of the defendant that fact shall be stated therein. The summons shall be in the form heretofore adopted and commonly used, but may be altered from time to time like other writs.

1 SECTION 2. Such summons may be served in any county by an
 2 officer qualified to serve civil process or by a disinterested person
 3 by exhibiting and reading it to the witness, by giving him a copy
 4 thereof or by leaving such copy at the place of his abode.

Service of
 summons.
 1826, 86, § 5.
 R. S. 94, § 2.
 G. S. 131, § 2.
 1863, 157, § 3.
 P. S. 169, § 2.

1 SECTION 3. No person shall be required to attend as a witness
 2 in a civil case or for the defendant in a criminal case, unless the
 3 fees allowed by law for one day's attendance and for travel to and
 4 from the place where he is required to attend are paid or tendered
 5 to him.

Tender of fees.
 C. L. 159, § 3.
 1701-2, 5, § 5.
 1743-4, 24, § 1.
 1784, 28, § 6.
 R. S. 94, § 3.
 G. S. 131, § 3.

P. S. 169, § 3.

1885, 141.

99 Mass. 177.

1 SECTION 4. If a person who has been duly summoned and re-
 2 quired to attend as a witness under the provisions of the preceding
 3 sections fails, without a sufficient excuse, to attend, he shall be
 4 liable to the aggrieved party in an action of tort for all damages
 5 caused by such failure.

Liability
 for not
 attending.
 1701-2, 5, § 5.
 1743-4, 24, § 1.
 1784, 28, § 6.
 R. S. 94, § 4.
 G. S. 131, § 4.

P. S. 169, § 4.

4 Cnsh. 249.

1 SECTION 5. Such failure to attend as a witness before a court,
 2 justice of the peace, master in chancery, an auditor appointed by a
 3 court, or the county commissioners shall also be a contempt of the
 4 court, and may be punished by a fine of not more than twenty
 5 dollars.

Non-attend-
 ance a con-
 tempt.
 1701-2, 5, § 5.
 1743-4, 24, § 1.
 1784, 28, § 6.
 R. S. 94, § 5.

1838, 42.

1856, 284, § 9.

1858, 93, §§ 2, 3.

G. S. 131, § 5.

P. S. 169, § 5.

120 Mass. 118.

1 SECTION 6. The court, justice, master in chancery, auditor or
 2 county commissioners may in such case issue a warrant to bring
 3 such witness before them to answer for the contempt, and also to
 4 testify in the case in which he was summoned.

Warrant to
 compel attend-
 ance.
 1784, 28, § 6.
 R. S. 94, § 6.
 G. S. 131, § 6.

P. S. 169, § 6.

12 Cnsh. 320.

2 Gray, 410.

166 Mass. 124.

1 SECTION 7. Witnesses may be summoned to attend and testify
 2 at a hearing before the executive council, or a committee thereof,
 3 as to matters within its authority; and shall be summoned in the
 4 same manner, be paid the same fees and in the same manner, and
 5 be subject to the same penalties for default, as witnesses before the
 6 general court.

Witness before
 executive
 council.
 1861, 166.
 P. S. 169, § 9.

1 SECTION 8. Witnesses may be summoned to attend and testify
 2 and to produce books and papers at a hearing before a city council,
 3 or either branch thereof, or before a joint or special committee of
 4 the same or of either branch thereof, or before a board of select-
 5 men or a board of police commissioners, or a board of registrars of
 6 voters, or before the board of police or of election commissioners
 7 for the city of Boston at any hearing before them, as to matters
 8 within their authority; and such witnesses shall be summoned
 9 in the same manner, be paid the same fees and be subject to the
 10 same penalties for default, as witnesses before police, district and
 11 municipal courts. The presiding officer of such council, or of either
 12 branch thereof, or a member of any such committee or board may
 13 administer oaths to witnesses who appear before such council, or
 14 either branch thereof, or any such committee or board, respectively.

— before city
 and town
 officers, etc.
 1863, 158, § 1.
 P. S. 169, § 7.
 1882, 267, § 1.
 1885, 323, § 2.
 1900, 267, § 1.
 120 Mass. 118.

1 SECTION 9. If a witness who has been so summoned and paid
 2 fails to attend in pursuance of such summons, the presiding officer

Warrant to
 compel attend-
 ance.

1863, 158, § 2.
P. S. 169, § 8.
1882, 267, § 2.
1900, 267, § 2.

of such city council, or of either branch thereof, or the chairman
of such board may issue a warrant to bring such witness before
them, to testify in the case in which he was summoned.

Enforcement
of attendance
by courts.
1879, 155.
P. S. 112, § 25.
1883, 165.
1891, 140.
1901, 286.
141 Mass. 307.
175 Mass. 179.

SECTION 10. A justice of the supreme judicial court or of the
superior court, upon the application of a tribunal which is authorized
to summon but not to compel the attendance of witnesses and the
giving of testimony before it, may, in his discretion, compel the at-
tendance of such witnesses and the giving of testimony before any
such tribunal, in the same manner and to the same extent as before
said courts.

— of giving of
testimony.
1879, 155.
P. S. 112, § 25.
1898, 374.
1901, 286.
175 Mass. 179.

SECTION 11. A justice of the supreme judicial court or of the
superior court, upon the application of a magistrate or tribunal
which is authorized to summon and compel the attendance of wit-
nesses may, in his discretion, compel the giving of testimony by
them before such magistrate or tribunal, in the same manner and to
the same extent as before said courts.

Witnesses in
criminal cases
in adjoining
states.
1777-8, 5, § 1.
1873, 319, § 1.
1874, 150.
P. S. 169, § 10.

SECTION 12. A justice of the peace, upon receipt of a certificate
of the clerk of a court of record in the state of Maine or in a state
adjoining this commonwealth that a criminal prosecution is pend-
ing in such court, and that a resident of this commonwealth is
supposed to be a material witness therein, shall issue a summons
requiring such witness to appear and testify at the court in which
such case is pending.

Penalty.
1873, 319, § 2.
P. S. 169, § 11.

SECTION 13. If the person on whom such summons is served is
paid or tendered double the fees allowed by law for travel and at-
tendance of witnesses in the supreme judicial court, and double
travelling expenses for the whole distance out and home by the
ordinary travelled route, he shall, if he neglects, without good
cause, to attend as a witness at the court named in such summons,
forfeit not more than three hundred dollars.

Administra-
tion of oaths.
1892, 54.
G. S. 131, § 7.
P. S. 169, § 12.

SECTION 14. Arbitrators, referees and auditors appointed ac-
cording to law may administer oaths or affirmations to all persons
offered as witnesses before them.

Mode of ad-
ministering
oaths.
1701-2, 5, § 7.
1797, 35, § 10.
R. S. 94, § 7.
G. S. 131, § 8.

SECTION 15. The usual mode of administering oaths now prac-
tised in this commonwealth, with the ceremony of holding up the
hand, shall be observed in all cases in which an oath may be ad-
ministered by law, except as hereinafter provided.

P. S. 169, § 13.

11 Allen, 243.

Same subject.
1797, 35, § 10.
R. S. 94, § 8.
G. S. 131, § 9.
1873, 212, § 1.
P. S. 169, § 14.
6 Mass. 262.

SECTION 16. If a person to be sworn declares that a different
mode of taking the oath is, in his opinion, more solemn and ob-
ligatory than the upholding of the hand, the oath may be admin-
istered in such mode.

Affirmations.
1743-4, 20, §§ 1, 2.
1758-9, 18, §§ 1, 2.
1797, 35, §§ 9, 10.
1810, 127, § 1.

SECTION 17. A Friend or Quaker when called on to take an
oath may solemnly and sincerely affirm under the penalties of
perjury.

R. S. 94, § 9.

G. S. 131, § 10.

P. S. 169, § 15.

- 1 SECTION 18. A person who declares that he has conscientious

2 scruples against taking an oath shall, when called upon for that

3 purpose, be permitted to affirm in the manner prescribed for

4 Quakers, if the court or magistrate on inquiry is satisfied of the

5 truth of such declaration.
- Affirmations.

1824, 31, § 1.

R. S. 94, § 10.

G. S. 131, § 11.

P. S. 169, § 16.

3 Met. 254.

113 Mass. 344.
- 1 SECTION 19. A person believing in any other than the Christian

2 religion may be sworn according to the peculiar ceremonies of

3 his religion. A person not a believer in any religion shall be re-

4 quired to testify truly under the penalties of perjury; and the

5 evidence of his disbelief in the existence of God may be received

6 to affect his credibility as a witness.
- Persons other than Chris-

tians, how

sworn, &c.

1797, 35, § 10.

R. S. 94, § 11.

G. S. 131, § 12.

P. S. 169, § 17.

16 Gray, 33.
- 1 SECTION 20. Any person of sufficient understanding, although

2 a party, may testify in any proceeding, civil or criminal, in court,

3 or before a person who has authority to receive evidence, except

4 as follows :
- Competency of

witnesses.

1851, 233, § 97;

255, § 3.

1852, 312, § 60.

1856, 188.
- 1857, 305, § 1.

1859, 230.

G. S. 131, §§ 13, 14, 16.
- 1864, 304, § 1.

1866, 148, § 5; 200.

P. S. 169, § 18.
- 1865, 207, § 2.

1870, 393, § 1.

142 Mass. 577.
- 5 First, Neither husband nor wife shall testify as to private con-

6 versations with each other.
- 14 Gray, 186.

113 Mass. 157.

121 Mass. 137.
- 152 Mass. 491.

155 Mass. 534.

162 Mass. 412.

177 Mass. 184.
- 7 Second, Neither husband nor wife shall be compelled to testify

8 in the trial of an indictment, complaint or other criminal proceed-

9 ing against the other.
- 162 Mass. 441.
- 10 Third, The defendant in the trial of an indictment, complaint or

11 other criminal proceeding shall, at his own request, but not other-

12 wise, be allowed to testify : but his neglect or refusal to testify

13 shall not create any presumption against him.
- 97 Mass. 587.

107 Mass. 205.

110 Mass. 411.

113 Mass. 211.

114 Mass. 285.

119 Mass. 312.
- 123 Mass. 234, 273.

137 Mass. 98.

163 Mass. 412.

149 U. S. 60.
- 130 Mass. 279.

141 Mass. 58.

175 Mass. 152.
- 1 SECTION 21. The conviction of a witness of a crime may be

2 shown to affect his credibility.
- Witness con-

victed of crime.
- R. S. 94, § 56.

G. S. 131, § 13.

128 Mass. 244.

150 Mass. 108.
- 1851, 233, § 97.

1870, 393, § 3.

137 Mass. 77.

169 Mass. 338.
- 1852, 312, § 60.

P. S. 169, § 19.

146 Mass. 131.

170 Mass. 14.
- 1 SECTION 22. A party who calls the adverse party as a wit-

2 ness shall be allowed to cross examine him.
- Cross exami-

nation of

adverse party.
- 1870, 393, § 4.

P. S. 169, § 20.
- 1 SECTION 23. The provisions of the three preceding sections

2 shall not apply to the attesting witnesses to a will or codicil.
- Witnesses to a

will.

1851, 233, § 97.
- 1852, 312, § 60.

G. S. 131, § 15.

P. S. 169, § 21.
- 1857, 103, § 3.

1870, 393, § 2.

10 Allen, 153.
- 1 SECTION 24. The party who produces a witness shall not im-

2 peach his credit by evidence of bad character, but may contradict

3 him by other evidence, and may also prove that he has made at

4 other times statements inconsistent with his present testimony;

5 but before proof of such inconsistent statements is given, the cir-

6 cumstances thereof sufficient to designate the particular occasion

7 shall be mentioned to the witness, and he shall be asked if he has

8 made such statements, and, if so, shall be allowed to explain them.
- Party not to

impeach his

own witness.

1869, 425.

P. S. 169, § 22.

102 Mass. 526.

121 Mass. 433.

122 Mass. 5.

134 Mass. 191.

139 Mass. 1.

172 Mass. 432.

176 Mass. 253.

DEPOSITIONS.

Depositions.
R. S. 94, § 13.
G. S. 131, § 17.
P. S. 169, § 23.
103 Mass. 318.

SECTION 25. Depositions may be taken as provided in this chapter, to be used before courts, magistrates or other persons authorized to examine witnesses, except in criminal cases.

170 Mass. 498.

Same subject.
C. L. 158, § 2.
1695-6, 14, §§ 1, 2.
1785, 12, § 3.
1797, 35, § 1.
R. S. 94, § 14.
1857, 305, § 2.
G. S. 131, §§ 18, 59.
P. S. 169, §§ 24, 65.

SECTION 26. If a witness or party whose testimony is wanted in a civil cause or proceeding pending in this commonwealth lives more than thirty miles from the place of trial, or is about to go out of the commonwealth and not to return in time for the trial, or is so ill, aged or infirm as to make it probable that he will not be able to attend at the trial, his deposition may be taken.

5 Gray, 440.

14 Gray, 130.

Notice to
adverse party.
C. L. 158, § 2.
1695-6, 15, § 1.
1797, 35, § 1.
1817, 181, § 1.
R. S. 94, § 15.
G. S. 131, § 19.
P. S. 169, § 25.
1883, 252.
13 Allen, 33.
106 Mass. 338.

SECTION 27. After an action has been commenced by the service of process, or after it has been submitted to arbitrators or referees, either party may apply to a justice of the peace or special commissioner who shall issue a notice to the adverse party to appear before said justice or commissioner or any other justice of the peace or special commissioner at the time and place appointed for taking the deposition and propose interrogatories.

131 Mass. 88.

139 Mass. 295.

Service of
notice.
1797, 35, § 2.
R. S. 94, §§ 16, 17.

SECTION 28. The notice may be served on the adverse party, his agent or attorney; and if there are several plaintiffs or defendants, on any of them.

G. S. 131, § 20.

P. S. 169, § 26.

7 Pick. 137.

Manner of
service.
1695-6, 15, § 1.
1797, 35, § 2.
R. S. 94, § 18.
G. S. 131, § 21.
P. S. 169, § 27.
7 Met. 289.
11 Met. 78.
1 Allen, 343.

SECTION 29. The notice shall be served by delivering an attested copy thereof to the person to be notified, or by leaving such copy at his place of abode, not less than twenty-four hours before the time appointed for taking the deposition, and also allowing not less time than at the rate of one day, Sundays excluded, for every twenty miles' travel to the place appointed.

Verbal notice.
1817, 181, § 1.
R. S. 94, § 19.
G. S. 131, § 22.
P. S. 169, § 28.
1883, 188, § 1.

SECTION 30. The justice or commissioner who takes the deposition may give a verbal instead of the written notice, or if the adverse party or his attorney in writing waives notice or if the defendant does not enter his appearance in the action within the time required by law, no notice shall be required.

Deponent, how
sworn and
examined.
1695-6, 15, § 1.
1797, 35, § 3.
R. S. 94, § 20.
G. S. 131, § 23.
P. S. 169, § 29.
1 Allen, 109, 475.

SECTION 31. The deponent shall be sworn or affirmed to testify the truth, the whole truth and nothing but the truth, relative to the cause for which the deposition is taken. He shall then be examined by the justice or commissioner, and the parties if they think fit, and his testimony shall be taken in writing.

8 Allen, 146.

Same subject.
R. S. 94, § 21.
G. S. 131, § 24.
P. S. 169, § 30.

SECTION 32. The party producing the deponent shall be allowed first to examine him, either upon verbal or written interrogatories, on all the points which he considers material; the adverse party may then examine him in like manner; after which either party may propose further interrogatories.

1 SECTION 33. The deposition shall be written by the justice,
2 commissioner, deponent or by a disinterested person in the presence
3 and under the direction of the justice or commissioner, shall be
4 carefully read to or by the deponent, and then subscribed by him.

P. S. 169, § 31.

12 Cush. 132.

Deposition, by
whom to be
written.
1695-6, 15, § 1.
1797, 35, § 3.
R. S. 94, § 22.
G. S. 131, § 25.

1 SECTION 34. The justice or commissioner shall annex to the
2 deposition a certificate of the time and manner of taking it, the
3 person at whose request, the cause in which it was taken, the rea-
4 son for taking it, and that the adverse party attended, or if he did
5 not attend what notice was given to him.

1 Allen, 109, 475.

3 Allen, 358.

8 Allen, 146.

105 Mass. 100.

Certificate to
be annexed.
1797, 35, § 3.
R. S. 94, § 23.
G. S. 131, § 26.
P. S. 169, § 32.
20 Pick. 167.
5 Met. 173.
11 Cush. 364.

1 SECTION 35. The deposition shall be delivered by the justice or
2 commissioner to the court, arbitrators, referees or other persons
3 before whom the cause is pending, or shall be enclosed and sealed
4 by him and directed to it or them, and shall remain sealed until
5 opened by it or them.

8 Gray, 394.

1 Allen, 475.

Deposition to
be transmitted
to court, etc.
C. L. 158, § 2.
1695-6, 15, § 1.
1797, 35, § 3.
R. S. 94, § 24.
G. S. 131, § 27.
P. S. 169, § 33.

1 SECTION 36. The court may exclude the deposition if it finds
2 that the adverse party failed without fault to attend the taking
3 thereof, and shall exclude it if it finds that the reason for taking it,
4 or other sufficient cause for its use, no longer exists.

6 Cush. 394.

131 Mass. 88.

— when not to
be used.
1797, 35, § 5.
R. S. 94, § 25.
G. S. 131, § 28.
P. S. 169, § 34.

1 SECTION 37. Objections to the competency or credibility of the
2 deponent and to the admissibility of any questions asked of him, or
3 of any answers made by him, may be made when the deposition is
4 produced in the same manner as if he were personally examined
5 as a witness at the trial: but if a deposition is taken upon written
6 interrogatories, annexed to a commission, all objections to an in-
7 terrogatory shall be made before the commission issues; and, unless
8 the interrogatory is withdrawn, they shall be noted in the depo-
9 sition; otherwise, they shall not be allowed.

Objections to
deponent or
his testimony.
R. S. 94, § 26.
G. S. 131, § 29.
P. S. 169, § 35.
1 Pick. 309.
15 Pick. 56.
6 Met. 270.
2 Gray, 279.
4 Gray, 574.
7 Gray, 418.
10 Gray, 360.
8 Allen, 577.
103 Mass. 41,
318.

1 SECTION 38. If a plaintiff discontinues his action or becomes
2 nonsuit, and another action is afterward commenced for the same
3 cause between the same parties or their respective representatives,
4 depositions lawfully taken for the first action may be used in the
5 second in the same manner and subject to the same conditions
6 and objections as if originally taken for the second action, if the
7 deposition was duly filed in the court in which the first action was
8 pending and has remained in the custody of the court from the
9 termination of the first action until the commencement of the second.

Use of deposi-
tion in another
action.
1826, 86, § 1.
R. S. 94, § 27.
G. S. 131, § 30.
P. S. 169, § 36.
22 Pick. 309.

1 SECTION 39. The courts may make rules regulating the time
2 and manner of opening, filing and safe keeping of depositions, and
3 the taking and use thereof.

P. S. 169, § 37.

133 Mass. 132.

135 Mass. 586.

Rules concern-
ing deposi-
tions.
R. S. 94, § 28.
G. S. 131, § 31.

1 SECTION 40. A person may be summoned and compelled to give
2 his deposition at a place within twenty miles of his place of abode,
3 in like manner and under the same penalties as are provided for a
4 witness before a court.

G. S. 131, § 32.

P. S. 169, § 38.

Deponent may
be compelled
to testify.
1797, 35, § 4.
R. S. 94, § 29.

Non-resident
witness com-
morant here.
1837, 236.
G. S. 131, § 33.
P. S. 169, § 39.

SECTION 41. A person not a resident of, but found within, this commonwealth may be summoned and compelled to give his deposition at any place within ten miles of the place at which the summons is served upon him, in like manner and under the same penalties as he may be summoned and compelled to attend as a witness before a court.

Depositions,
how taken out
of state.
1797, 35, § 6.
1823, 125, § 1.
R. S. 94, § 30.
1856, 253, § 1.
G. S. 131, § 34.
P. S. 169, § 40.
6 Met. 270.
163 Mass. 41.
168 Mass. 415.

SECTION 42. The deposition of a person without this commonwealth may be taken under a commission issued to one or more competent persons in another state or country by the court in which the cause is pending; or it may be taken before a commissioner appointed by the governor for that purpose; and in either case the deposition may be used in the same manner and subject to the same conditions and objections as if it had been taken in this commonwealth.

Depositions
to be taken
on written in-
terrogatories.
R. S. 94, § 31.
G. S. 131, § 35.
P. S. 169, § 41.
1883, 188, § 2.
1889, 123, § 1.

SECTION 43. Unless the court otherwise orders, a deposition taken before commissioners shall be taken upon written interrogatories, which shall be filed in the clerk's office and notice thereof given to the adverse party or his attorney, and upon cross interrogatories, if any are filed by him. But if the defendant does not enter his appearance in the action within the time required by law, no notice to him shall be required. The court may in any case order depositions to be taken before commissioners, in the manner provided by law for taking the depositions of witnesses within the commonwealth in actions at law, or in such manner as the court orders, and in such cases shall determine what notice shall be given to the adverse party, his agent or attorney, and the manner of service thereof, may authorize the taking of depositions of witnesses not specifically named in the commission, and may limit the extent of the inquiry. The court may order the production before the commissioner of any books, instruments or papers relative to any matter in issue.

Rules for
foreign
depositions.
1797, 35, § 7.
R. S. 94, § 32.

SECTION 44. The courts may make rules for the issuing of commissions, the filing of interrogatories and all other matters relative to depositions taken without the commonwealth.

G. S. 131, § 36.

P. S. 169, § 42.

Use of foreign
depositions.
1797, 35, §§ 6, 7.
R. S. 94, § 33.
G. S. 131, § 37.
P. S. 169, § 43.
14 Pick. 313.
20 Pick. 167,
441.
24 Pick. 35.
2 Met. 522.
6 Met. 270.
9 Gray, 370.
12 Gray, 26.
5 Allen, 320.
8 Allen, 391.
163 Mass. 41.
162 Mass. 137.

SECTION 45. Depositions and affidavits taken without the commonwealth in any manner other than is provided in the three preceding sections, if taken before a notary public or other person authorized by the laws of any other state or country to take depositions, may be admitted or rejected in the discretion of the court; but such deposition or affidavit shall not be admitted unless the court finds that the adverse party had sufficient notice of the taking thereof, and an opportunity to cross examine the witness, or that from the circumstances of the case it was impossible to give him such notice.

Depositions
for courts in
other states,
etc.

SECTION 46. A person may be summoned and compelled, in like manner and under the same penalties as are provided for a wit-

3 ness before a court, to give his deposition in a cause pending in a
 4 court of any other state or government. Such deposition may be
 5 taken before a justice of the peace or special commissioner in this
 6 commonwealth, or before a commissioner appointed under the
 7 authority of the state or government in which the action is pending.
 8 If the deposition is taken before such commissioner, the witness
 9 may be summoned and compelled to appear before him by process
 10 from a justice of the peace or special commissioner in this com-
 11 monwealth.

DEPOSITIONS TO PERPETUATE TESTIMONY.

1 SECTION 47. If a person desires to perpetuate his own testi-
 2 mony or the testimony of another person he shall apply in writing
 3 to two justices of the peace or special commissioners, one of whom
 4 shall be an attorney at law, requesting them to take his deposition
 5 or the deposition of the person whose testimony he desires to per-
 6 petuate and stating briefly and substantially his title, claim or
 7 interest in or to the subject relative to which he desires the evi-
 8 dence perpetuated, the names of all other persons interested or
 9 supposed to be interested therein and the name of the witness pro-
 10 posed to be examined.

Depositions
to perpetuate
testimony.
R. S. 94, § 53.
G. S. 131, § 28.
P. S. 169, § 44.
1883, 252.
1889, 197.
11 Allen, 243.

1 SECTION 48. The justices or commissioners shall thereupon cause
 2 notice of the time and place appointed for taking the deposition to
 3 be given to all persons named in said statement as interested in the
 4 case, in the manner provided in sections twenty-seven to thirty,
 5 inclusive; and if in the opinion of the justices or commissioners
 6 no sufficient provision is made by law for giving notice to parties
 7 adversely interested, they shall cause such reasonable notice to be
 8 given as they consider proper. A person may be summoned and
 9 compelled to give a deposition in perpetuation of his testimony in
 10 like manner and under the same penalties as are provided for a
 11 witness before a court.

Notice to
persons inter-
ested.
1797, 35, § 8.
1826, 86, § 3.
R. S. 94, §§ 35,
39.
1839, 140, § 2.
G. S. 131, §§ 40,
45.
1874, 297.
P. S. 169, §§ 46,
51.

1 SECTION 49. If at the time and place so appointed a witness
 2 or a person interested appears and objects, the justices shall not take
 3 the deposition unless upon hearing the parties they find that such
 4 testimony may be material to the petitioner and is not sought for
 5 the purpose of discovery or of using it in an action then pending
 6 or unless the witness is the petitioner in an action thereafter to be
 7 brought against said witness, and that the petitioner is in danger of
 8 losing the same before it can be taken in any action wherein his
 9 right, title, interest or claim can be tried. In all cases the peti-
 10 tioner, his agent or attorney, shall, at the request of such witness
 11 or of a person interested, be examined on oath relative to his
 12 reasons for taking the deposition.

Depositions to
perpetuate
testimony not
to be taken,
when.
1839, 140, § 1.
G. S. 131, § 41.
1874, 297.
P. S. 169, § 47.

1 SECTION 50. The deponent shall be sworn and examined, and
 2 his deposition shall be written, read and subscribed in the manner
 3 provided in sections thirty-one to thirty-three, inclusive; and the
 4 justices shall sign and annex thereto a certificate of the name of
 5 the person at whose request it was taken, the names of all persons

— mode of
taking.
1797, 35, § 8.
1817, 181, § 2.
R. S. 94, § 36.
G. S. 131, § 42.
1874, 297.
P. S. 169, § 48.
3 Pick. 74.
5 Met. 173.

who were notified to attend, of all who attended the taking thereof, 6
of the time and manner of taking it, and that it was taken for the 7
purpose of perpetuating the testimony therein. 8

Depositions,
record of.
1797, 35, § 8.
R. S. 94, § 37.
G. S. 131, § 43.
1874, 297.
P. S. 169, § 49.

SECTION 51. The deposition, the certificate and the application 1
of the petitioner shall, within ninety days after the taking of the 2
deposition, be recorded in the registry of deeds in the county or 3
district in which the land lies, if the deposition relates to land; 4
otherwise in the county or district in which the parties or some of 5
them reside. 6

— use of.
1797, 35, § 8.
1826, 86, § 2.
R. S. 94, § 38.
G. S. 131, § 44.
1874, 297.
P. S. 169, § 50.
3 Pick. 74.

SECTION 52. If, at the time of taking such deposition or after- 1
ward, an action is pending between the petitioner and the persons 2
named in his application or any of those who were notified as afore- 3
said, or any persons claiming under any of said persons, relative 4
to the title, claim or interest set forth in the application, the 5
deposition or a certified copy of it from the registry of deeds, 6
may be used in such action in the same manner and subject to the 7
same conditions and objections as if it had been originally taken 8
therefor. 9

Foreign depo-
sitions.
R. S. 94, § 40.
G. S. 131, § 46.
P. S. 169, § 52.
3 Pick. 14.
132 Mass. 171.

SECTION 53. Depositions to perpetuate the testimony of persons 1
living without the commonwealth may be taken without the com- 2
monwealth, upon a commission issued by the supreme judicial court 3
or the superior court. 4

Statement to
be filed by
applicant.
R. S. 94, § 41.
G. S. 131, § 47.
P. S. 169, § 53.

SECTION 54. The person who desires to take such deposition 1
shall file in either of said courts the application provided in 2
section forty-seven; and if the subject of the proposed deposition 3
relates to land within this commonwealth, a copy of the applica- 4
tion with the statement therein shall be filed in the registry of 5
deeds for the county or district in which the land or any part 6
thereof lies; otherwise, in the registry of deeds for the county or 7
district in which the parties or some of them reside. 8

Notice to
adverse party.
R. S. 94, § 42.
G. S. 131, § 48.
P. S. 169, § 54.
1882, 140.
132 Mass. 171.

SECTION 55. The court shall order notice of such application 1
and statement to be served on all the persons named therein as 2
adversely interested and living within the commonwealth fourteen 3
days at least before the time therein appointed for hearing the 4
parties, and shall order reasonable notice to be given to such 5
persons living without the commonwealth. 6

Commission.
R. S. 94, § 43.
G. S. 131, § 49.
P. S. 169, § 55.

SECTION 56. If, upon hearing the parties who appear, the court 1
finds that there is sufficient cause for taking the deposition, it shall 2
issue a commission therefor in like manner as for taking a deposi- 3
tion to be used in a cause pending in the same court. 4

Deposition,
how taken and
returned.
R. S. 94, § 44.
G. S. 131, § 50.
P. S. 169, § 56.

SECTION 57. The deposition shall be taken upon written inter- 1
rogatories filed by the applicant, and cross interrogatories, if any 2
are filed by any party adversely interested, and it shall be taken 3
and returned substantially in the same manner as if taken to be 4
used in a cause pending in the same court. 5

1 SECTION 58. The supreme judicial court may make rules for
2 taking depositions to perpetuate the testimony of witnesses without
3 the commonwealth, taken under a commission from the supreme
4 judicial court or the superior court, and for the filing or recording
5 of such depositions.

Rules for
depositions
in perpetuum.
R. S. 94, § 46.
G. S. 131, § 52.
P. S. 169, § 58.

1 SECTION 59. Depositions to perpetuate the testimony of wit-
2 nesses which are taken without this commonwealth according to the
3 provisions of this chapter may be used in like manner as if taken
4 within the commonwealth.

Use of such
depositions.
R. S. 94, § 47.
G. S. 131, § 53.
P. S. 169, § 59.

1 SECTION 60. Depositions to perpetuate the testimony of wit-
2 nesses within or without the commonwealth, so that it may be evi-
3 dence against all persons, may, after public notice, be taken upon
4 a commission issued by the supreme judicial court or the superior
5 court.

Depositions in
perpetuum
against all
persons.
R. S. 94, § 48.
G. S. 131, § 54.
P. S. 169, § 60.
132 Mass. 171.

1 SECTION 61. The person who desires to have such deposition
2 taken may apply to either of said courts in the manner provided
3 in section fifty-four, and the proceedings thereon shall be the same
4 as are provided in sections fifty-five to fifty-seven, inclusive.

Proceedings.
R. S. 94, § 49.
G. S. 131, § 55.
P. S. 169, § 61.

1 SECTION 62. The court shall, in addition to the proceedings
2 before provided, require the applicant upon oath or otherwise, in
3 its discretion, to state the names of all persons known or supposed
4 to be interested in the subject matter of the application, and shall
5 in the commission direct the commissioner or commissioners to
6 publish in such newspaper within or without the commonwealth,
7 or both, or in such other manner, as the court orders, such notice
8 of the time and place of taking such deposition, and of the subject
9 matter thereof, as the court approves. Such notice shall be ad-
10 dressed by name to all persons who are known or supposed to be
11 interested in the subject matter of the application, and generally to
12 all others, and shall state that they may attend and propose cross
13 interrogatories to the witness. The court may require additional
14 personal notice of the time and place of taking and of the subject
15 matter of such deposition to be given to such persons and in such
16 manner as it orders.

Same subject.
R. S. 94, § 50.
G. S. 131, § 56.
P. S. 169, § 62.
132 Mass. 171.

1 SECTION 63. After such deposition has been taken, it shall be
2 returned to the court by whose order the commission issued, which,
3 if the deposition is found to have been taken according to law and
4 the directions contained in the commission, shall order it to be re-
5 corded within thirty days after the date of the order in the registry
6 of deeds, in the manner provided in section fifty-one.

Record of such
depositions.
R. S. 94, § 51.
G. S. 131, § 57.
P. S. 169, § 63.
131 Mass. 180.

1 SECTION 64. A deposition taken and recorded under the pro-
2 visions of the four preceding sections, or a certified copy thereof
3 from the registry of deeds, may be used by the person at whose re-
4 quest it was taken, or by any person who claims under him, against
5 any person whatever, in any action or process, wherein is brought
6 in question the title, claim or interest set forth in the statement

Use of such
depositions.
R. S. 94, § 52.
G. S. 131, § 58.
P. S. 169, § 64.

upon which the commission was founded, in the same manner, and
subject to the same conditions and objections, as if it had been
originally taken for said action or process.

DYING DECLARATIONS AND DECLARATIONS OF DECEASED PARTIES.

Dying declara-
tions.
1889, 100.
165 Mass. 149,
174.

SECTION 65. In prosecutions under the provisions of section
fifteen of chapter two hundred and twelve in which the death of a
woman is alleged to have resulted from the means therein described,
her dying declarations shall be admissible in evidence.

Declarations
of deceased
persons.
1898, 535.
165 Mass. 174.
175 Mass. 137.

SECTION 66. A declaration of a deceased person shall not be
inadmissible in evidence as hearsay if the court finds that it was
made in good faith before the commencement of the action and
upon the personal knowledge of the declarant.

— of testators,
etc.
1896, 445.
175 Mass. 137,
177.

SECTION 67. If the cause of an action brought against an execu-
tor or administrator is supported by oral testimony of a promise or
statement made by the testator or intestate of the defendant, evi-
dence of statements, written or oral, made by the decedent, memo-
randa and entries written by him and evidence of his acts and
habits of dealing tending to disprove or to show the improbability
of the making of such promise or statement shall be admissible.

STENOGRAPHIC TRANSCRIPTS.

Stenographic
transcripts.
1894, 424, § 9.
1896, 459, § 7.

SECTION 68. Transcripts from stenographic notes duly taken in
the superior court under the authority of law, when verified by the
certificate of the official stenographer or assistant taking them shall
be admissible as evidence of testimony given whenever proof of
such testimony is otherwise competent.

EVIDENCE IN PROCEEDINGS IN EQUITY.

Evidence in
equity.
1852, 312, § 85.
G. S. 131, § 60.
P. S. 169, § 66.
1899, 123, § 2.
12 Cush. 601.

SECTION 69. The evidence shall be taken in proceedings in
equity in the same manner as in actions at law, unless the court
otherwise orders; but the provisions of this section shall not pre-
vent such use of affidavits as has been heretofore allowed.

13 Allen, 33.

137 Mass. 490.

PROOF OF ATTESTED INSTRUMENTS.

Proof of
attested instru-
ments.
1897, 386.

SECTION 70. The signature to an attested instrument or writ-
ing, except a will, may be proved in the same manner as if it were
not attested.

PROOF OF STATUTES, LAWS, ETC.

— of records
of courts
of other states.
R. S. 94, § 57.
G. S. 131, § 61.
P. S. 169, § 67.
5 Met. 436.
10 Allen, 485.
12 Allen, 98.

SECTION 71. The records and judicial proceedings of a court
of another state or of the United States shall be admissible in evi-
dence in this commonwealth, if authenticated by the attestation of
the clerk or other officer who has charge of the records of such
court under its seal.

103 Mass. 283.

119 Mass. 262.

1 SECTION 72. Acts of incorporation shall be held to be public
2 acts and as such may be declared on and given in evidence.

G. S. 3, § 5.

P. S. 169, § 68.

Acts of incor-
poration held
public acts.
R. S. 2, § 3.

1 SECTION 73. The printed copies of all statutes, acts and resolves
2 of the commonwealth, public or private, which are published under
3 the authority of the commonwealth, and copies of the ordinances
4 of a city, the by-laws of a town or of the rules and regulations of a
5 board of aldermen, if attested by the clerk of such city or town,
6 shall be admitted as sufficient evidence thereof in all courts of law,
7 and on all occasions.

Published acts
and resolves
to be evidence.
1805, 36.
R. S. 94, § 58.
G. S. 131, § 62.
P. S. 169, § 69.
1889, 387, § 1.

1 SECTION 74. Copies of books, papers, documents and records
2 in the executive or other departments of the commonwealth, or of
3 any city or town, authenticated by the attestation of the officer
4 who has charge of the same, shall be competent evidence in all
5 cases equally with the originals thereof, if the genuineness of the
6 signature of such officer is attested by the secretary of the common-
7 wealth under its seal or by the clerk of such city or town, as the
8 case may be.

Copies from
departments.
1867, 213.
P. S. 169, § 70.
1889, 387, § 2.
142 Mass. 71.
175 Mass. 460.

1 SECTION 75. Printed copies of the statute laws of any other
2 state or territory or of the United States or of a foreign country,
3 which purport to be published under the authority of their re-
4 spective governments, or if commonly admitted and read as evi-
5 dence in their courts, shall be admitted in this commonwealth, in
6 all courts of law and on all occasions, as prima facie evidence of
7 such laws.

Statutes of
other states.
R. S. 94, § 59.
G. S. 131, § 63.
P. S. 169, § 71.
3 Pick. 293.
8 Gray, 150.
4 Allen, 504.
10 Allen, 337.
105 Mass. 480.

1 SECTION 76. The unwritten or common law of any other of the
2 United States, or of the territories thereof, may be proved as facts
3 by parol evidence; and the books of reports of cases adjudged in
4 their courts may also be admitted as evidence of such law.

124 Mass. 85.

135 Mass. 349.

156 Mass. 65.

161 Mass. 111.

Common law
of other states.
R. S. 94, § 60.
G. S. 131, § 64.
P. S. 169, § 72.
10 Allen, 485.
100 Mass. 79.

1 SECTION 77. The existence, tenor or effect of all foreign laws
2 may be proved as facts by parol evidence; but if it appears that
3 they are contained in a written statute or code, the court may in
4 its discretion reject any evidence of such law which is not accom-
5 panied by a copy thereof.

Laws of for-
eign countries,
how proved.
R. S. 94, § 61.
G. S. 131, § 65.
P. S. 169, § 73.
14 Mass. 455.

1 SECTION 78. All oaths and affidavits administered or taken by
2 a notary public, duly commissioned and qualified by authority
3 of any other state or government, within the jurisdiction for which
4 he is commissioned, and certified under his official seal, shall be as
5 effectual in this commonwealth as if administered or taken and
6 certified by a justice of the peace therein.

Oaths before a
foreign notary.
1873, 191.
P. S. 169, § 74.

CHAPTER 176.

OF JURIES.

- SECTIONS 1-3. — Qualification and Exemption.
 SECTIONS 4-9. — Jury Lists.
 SECTIONS 10-16. — Venires.
 SECTIONS 17-24. — Drawing and Summoning of Jurors.
 SECTIONS 25-35. — General Provisions.
 SECTIONS 36-39. — Penalties.
 SECTION 40. — Special Juries.

QUALIFICATION AND EXEMPTION.

Qualifications
and exemp-
tions.

C. L. 55, § 2;
148, § 4; 352.
1784, 7, §§ 2, 9.
1785, 42, § 4.
1802, 92, § 1.
1807, 140, § 1.
1808, 25.
1812, 141, § 2.
R. S. 18, § 17;
95, §§ 1-3.
1838, 21.
1849, 218, § 8.
1851, 204.
1858, 93, § 2.
G. S. 132, §§ 1, 2.
1864, 215.
1874, 320, § 17.
P. S. 170, §§ 1, 2.
1896, 427.
9 Mass. 107.
20 Pick. 1.
121 Mass. 69.
143 Mass. 150.
163 Mass. 453.

SECTION 1. A person qualified to vote for representatives to the general court shall be liable to serve as a juror, except that the following persons shall be exempt:

The governor; lieutenant governor; members of the council; secretary of the commonwealth; members and officers of the senate and house of representatives during the session of the general court; judges and justices of a court, except justices of the peace; county and associate commissioners; clerks of courts and assistant clerks and all regularly appointed officers of the courts of the United States and of this commonwealth; registers of probate and insolvency; registers of deeds; sheriffs and their deputies; constables; marshals of the United States and their deputies, and all other officers of the United States; attorneys at law; settled ministers of the gospel; officers of colleges; preceptors and teachers of incorporated academies; registered practising physicians and surgeons; cashiers of incorporated banks; constant ferrymen; persons who are more than sixty-five years old; members of the volunteer militia; members of the ancient and honorable artillery company; superintendents, officers and assistants employed in or about a state hospital, insane hospital, jail, house of correction, state industrial school or state prison; keepers of light houses; conductors and engine drivers of railroad trains; teachers in public schools; enginemen and members of the fire department of the city of Boston, and of other cities and towns in which such exemption has been made by vote of the city council or the inhabitants of the town, respectively.

To serve,
when.

B. L. 49.
C. L. 87, § 5.
1694-5, 24, § 6.
1741-2, 18, § 3.
1749-50, 5, § 2.
1756-7, 13, § 3.
1759-60, 29, § 3.
1802, 92, § 5.
1807, 140, §§ 1,
4, 5.

SECTION 2. A person who attends and serves as a juror in any court in pursuance of a draft shall not be liable to be drawn or to so serve again within three years after the termination of such service, except in the counties of Nantucket and Dukes County, in which he shall be so liable once in every two years.

1812, 141, § 2.
1824, 119, § 1.

1825, 176, § 1.
R. S. 95, §§ 12, 38.

G. S. 132, §§ 3, 4.
P. S. 170, §§ 3, 4.

16 Mass. 220.
8 Pick. 504.

Limit of ser-
vice in Suffolk.
1822, 13, § 3.
R. S. 86, § 7.
G. S. 132, § 10.
1873, 44.
1879, 76.

SECTION 3. A person shall not serve as a traverse juror in the county of Suffolk more than thirty days at any sitting of the court, except to finish a case commenced within that time, nor in the trial of criminal cases at more than one sitting thereof during the year.

P. S. 170, § 5.

128 Mass. 458.

JURY LISTS.

1 SECTION 4. The board of registrars of voters in every city,
 2 except Boston, and in Boston the board of election commis-
 3 sioners, and the selectmen of towns shall annually, in January or
 4 February, prepare a list of such inhabitants of the city or town,
 5 of good moral character, of sound judgment and free from all
 6 legal exceptions, not absolutely exempt from jury service, as they
 7 think qualified to serve as jurors. Such list shall include not
 8 less than one for every one hundred inhabitants of the city or
 9 town, nor more than one for every sixty inhabitants, according
 10 to the latest census, state or national, but in the counties of Nan-
 11 tucket or Dukes County, it may include one for every thirty
 12 inhabitants.

1891, 131.

1897, 515, § 1.

7 Met. 326.

Preparation
of lists.
1736-7, 10, § 1.
1741-2, 17, §§ 1, 4.
1749-50, 5, §§ 1, 4.
1756-7, 13, §§ 1, 4.
1759-60, 23, §§ 1,
4.
1784, 7, § 2.
1802, 92, § 1.
1807, 140, § 1.
1812, 141, § 2.
1822, 13, § 5.
1824, 119, § 2.
1825, 176, § 2.
R. S. 95, §§ 4, 34.
G. S. 132, §§ 6, 21.
1876, 207.
P. S. 170, §§ 6,
23, 24.

1 SECTION 5. Such list shall be posted by said boards, respec-
 2 tively, in public places in the city or town ten days at least before
 3 it is submitted for revision and acceptance, and shall then be sub-
 4 mitted to the board of aldermen or the single legislative board of
 5 cities having such board, and in towns, to a town meeting. A
 6 board to which such list is submitted may remove names therefrom
 7 of persons who have been convicted of crime and have not been
 8 pardoned on the ground of innocence of such crime or of persons
 9 not qualified for service as jurors and shall not add names thereto,
 10 except as provided in the following section; but a town may re-
 11 move therefrom the names of any persons or add thereto the names
 12 of persons liable to serve.

1894, 514, § 2.

1897, 515, § 2.

Posting, etc.,
of lists.
1736-7, 10, §§ 1, 4.
1741-2, 18, § 1.
1749-50, 5, §§ 1, 4.
1759-60, 23, §§ 1,
4.
1784, 7, § 2.
1802, 92, § 1.
1807, 140, § 1.
1812, 141, § 2.
R. S. 95, § 5.
1855, 167.
1856, 125.
G. S. 132, §§ 7,
21.
1876, 207.
P. S. 170, §§ 7,
23, 24.
1888, 123.

1 SECTION 6. If the list as revised and accepted includes less than
 2 one juror for every one hundred inhabitants of a city, said board
 3 of registrars of voters or said board of election commissioners shall
 4 prepare, post and submit as aforesaid a further list and like pro-
 5 ceedings shall be had as in the case of the original list, until the
 6 required number of jurors is obtained.

Revision of
lists in cities.
1888, 123.
1897, 515, § 3.

1 SECTION 7. In cities the board revising the list and in towns
 2 the selectmen shall cause the names on the list as completed to
 3 be written each on a separate ballot and shall roll or fold the bal-
 4 lots so as to resemble each other as much as possible and so that the
 5 name written thereon shall not be visible on the outside, and shall
 6 place the ballots in a box which shall be kept by the city or town
 7 clerk for the purpose.

1876, 207.

R. S. 95, § 6.
P. S. 170, §§ 8, 25.G. S. 132, § 8.
1897, 515, § 5.

Deposit of
names in box.
1736-7, 10, § 1.
1741-2, 18, §§ 1, 4.
1749-50, 5, §§ 1, 4.
1756-7, 13, §§ 1, 4.
1759-60, 23, § 1.
1784, 7, § 2.
1793, 63, § 4.
1802, 92, § 1.
1812, 141, § 2.

1 SECTION 8. If a person whose name has been so placed in the
 2 jury box is convicted of a scandalous crime or is guilty of gross
 3 immorality, his name shall be withdrawn therefrom by the board
 4 or selectmen and he shall not be returned to serve as a juror.

P. S. 170, § 9.

1897, 515, § 6.

Withdrawal of
names.
1784, 7, § 2.
1802, 92, § 1.
1807, 140, § 2.
R. S. 95, § 7.
G. S. 132, § 9.

1 SECTION 9. The jury lists in cities shall be published as a pub-
 2 lic document, with the address and occupation of each juror; and
 3 in towns, the list with the occupation of each juror shall be pub-
 4 lished in the annual town report.

Publishing.
1894, 514, § 3.
1897, 515, § 4.

VENIRES.

Writs of
venire facias.
C. L. 86, § 1;
1692-1700, 1, § 4;
2, § 4; 3, § 5.
1741-2, 18, § 5.
1749-50, 5, § 5.
1750-7, 13, § 5.
1759-60, 29, § 5.
1784, 7, § 1.
1807, 140, § 3.
1817, 63, § 3.

SECTION 10. The clerks of the supreme judicial court and the superior court shall, before each sitting and at such other times as the respective courts may order, issue writs of venire facias for jurors, requiring their attendance on such day of the sitting as the court may order. The number of jurors required by such writs shall be apportioned among the cities and towns, as nearly as may be, according to their respective populations.

1820, 79, § 8.

R. S. 95, §§ 13, 14.

G. S. 132, §§ 10, 11.

P. S. 170, §§ 10, 11.

Service.
C. L. 86, §§ 1, 2.
1694-5, 24, § 1.
1692-1700, 1, § 4;
2, § 4; 3, § 5.
1741-2, 18, § 5.
1749-50, 5, § 5.
1750-7, 13, § 5.
1759-60, 29, § 5.

SECTION 11. The venires shall be delivered to the sheriff of the county to be transmitted by him to a constable in each of the cities and towns to which they are respectively issued, who shall forthwith serve them in cities on the board authorized to draw jurors and in towns on the selectmen and town clerk.

1784, 4, §§ 1, 2; 7, §§ 1, 8.

1802, 92, § 2.

1822, 13.

G. S. 132, §§ 12, 22.

1897, 515, § 7.

1807, 140, § 4.

R. S. 95, §§ 15, 35.

P. S. 170, §§ 12, 25.

Additional
venires.
1713-4, 5.
1737-8, 20.
1741-2, 18, § 8.
1749-50, 5, § 2.
1750-7, 13, § 2.

SECTION 12. Either court may issue venires for additional jurors when necessary for the convenient despatch of its business. They shall be served and returned, and the jurors required to attend on such days, as the court orders.

1759-60, 29, § 8.

1807, 140, § 7.

R. S. 95, § 18.

G. S. 132, § 13.

P. S. 170, § 13.

Provisions for
Dukes County.
1852, 75.
G. S. 132, § 14.
P. S. 170, § 14.

SECTION 13. If a case is pending in the superior court for the county of Dukes County, in which the inhabitants of a town in said county are disqualified from serving as jurors, a justice of the court may order the clerk thereof to issue writs of venire facias for a sufficient number of jurors to try such case, from any town whose inhabitants are not so disqualified.

— for Bristol.
1878, 151, § 3.
P. S. 170, § 15.

SECTION 14. At the sittings of the supreme judicial court in the county of Bristol for which jurors are summoned to attend, one or more jurors from the county of Nantucket and at least four from the county of Dukes County shall be summoned, the venires for which shall be issued by the clerk of the courts for the county of Bristol. The cost of their travel and attendance shall be paid by the counties from which they are summoned.

Jurors from
Nantucket and
Dukes County.
1878, 151, § 3.
P. S. 170, § 16.
1891, 379, § 1.

SECTION 15. For the trial of an indictment found and returned in the county of Nantucket or Dukes County for a capital crime, such number of jurors as a justice of the superior court may order shall be summoned from said counties, respectively, and the cost of their travel and attendance shall be paid by the counties from which they are summoned.

Venires in
Barnstable.
1889, 173.

SECTION 16. No venires for the drawing and summoning of jurors for the sitting of the supreme judicial court for the county of Barnstable shall be issued unless at the time for their issue there shall be one or more cases to be tried thereat by jury.

DRAWING AND SUMMONING OF JURORS.

Drawing of
jurors.
1807, 140.
R. S. 95, § 8.
1837, 228.

SECTION 17. All jurors, except those required to serve in proceedings relative to the commitment of insane persons, shall be selected by drawing ballots from the jury box.

1854, 424.

G. S. 132, § 15.

P. S. 170, § 17.

1897, 515, § 7.

1 SECTION 18. When jurors are to be drawn in a city, the mayor
2 and city clerk shall meet with the aldermen, or single legislative
3 board, as the case may be, at the aldermanic or legislative chamber.
4 The ballots in the jury box shall be shaken and mixed and one of the
5 aldermen or members of the legislative board, designated by the
6 mayor, shall, without seeing the names written thereon, openly draw
7 a number of ballots equal to the number of jurors required. He
8 shall announce clearly and distinctly the names of the jurors so
9 drawn, and shall then hand the ballots drawn by him to the mayor,
10 who shall examine and verify them. The mayor shall then hand
11 such ballots to the city clerk, who shall announce clearly and dis-
12 tinctly the names upon the ballots and return the same to the
13 jury box, after making the indorsements thereon required by law,
14 and the names so drawn shall be recorded as part of the proceedings
15 and shall be published if and when the proceedings are published
16 officially. In the absence of the mayor, the chairman or president
17 of the board of aldermen or of the single legislative board shall per-
18 form the duties required of the mayor by the provisions of this
19 section.

Drawing of
jurors in
cities.
1822, 13, § 5.
R. S. 95, § 35.
G. S. 132, § 22.
1876, 207.
P. S. 170, § 25.
1894, 514, § 1.
1897, 515, § 7.

1 SECTION 19. When jurors are to be drawn in a town, the town
2 clerk and selectmen shall meet at the clerk's office or at some
3 other public place appointed for the purpose, and, if the clerk is
4 absent, the selectmen may proceed without him. The ballots in
5 the jury box shall be shaken and mixed and one of the selectmen,
6 without seeing the names written thereon, shall openly draw there-
7 from a number of ballots equal to the number of jurors required.

-- in towns.
1736-7, 10, § 2.
1741-2, 18, § 2.
1749-50, 5, § 2.
1756-7, 13, § 2.
1759-60, 29, § 2.
1784, 7, § 4.
1793, 63, § 1.
1807, 140, § 5.
R. S. 95, § 9.
G. S. 132, § 16.
P. S. 170, § 18.

1 SECTION 20. If a person drawn as provided in the two preceding
2 sections is exempt or unable by reason of illness or absence from
3 home to attend as a juror or has so served in any court within the
4 time provided in section two, his name shall thereupon be returned
5 to the box, and another drawn.

Return of
names to box.
1736-7, 10, § 4.
1749-50, 5, § 2.
1756-7, 13, § 2.
1759-60, 29, § 2.
1784, 7, § 4.
1793, 63, § 5.

1807, 140, § 5. R. S. 95, §§ 9, 35.
G. S. 132, §§ 16, 22. P. S. 170, §§ 18, 25. 1897, 515, § 7. 171 Mass. 459.

1 SECTION 21. If a person is drawn and returned to serve as a
2 juror in a court, the selectmen or the city clerk, respectively, shall
3 indorse on the ballot the date of the draft and return it to the box:
4 and when there is a revision and renewal of the ballots in the box,
5 the date of all the drafts made within the time provided in section
6 two shall be transferred to the new ballots.

Indorsement
on ballot.
1741-2, 18, § 2.
1749-50, 5, § 2.
1756-7, 13, § 3.
1759-60, 29, § 2.
1784, 7, §§ 4, 5.
1802, 92, § 5.
1807, 140, § 6.
R. S. 95, §§ 11,
35.

G. S. 132, §§ 17, 22. P. S. 170, §§ 19, 25. 1897, 515, § 7.

1 SECTION 22. If a town at a legal meeting votes that drafts for
2 jurors shall be made in open town meeting, they shall be so made
3 by the selectmen in the manner provided in the three preceding
4 sections. When in such town a venire is served upon the select-
5 men, they shall cause a town meeting to be notified and warned for
6 the purpose in the manner ordered by the town or otherwise pro-
7 vided by law.

Names drawn
in town meet-
ing.
1749-50, 5, § 2.
1756-7, 13, § 3.
1759-60, 29.
1784, 7, § 4.
1793, 63, § 6.
1807, 140, §§ 4,
5, 13.
R. S. 95, §§ 10,
15.

G. S. 132, § 18. P. S. 170, § 20.

1 SECTION 23. The meeting for drawing jurors in a city or town
2 shall be not less than seven nor more than twenty-one days before
3 the day when the jurors are required to attend.

Meetings for
drawing
jurors.
1741-2, 18, § 5.
1749-50, 5, § 5.
1756-7, 13, § 5.

1759-60, 29, § 5. 1807, 140, § 4. G. S. 132, §§ 19, 22. 1897, 515, § 7.
1784, 7, § 5. R. S. 95, §§ 16, 35. P. S. 170, §§ 21, 25.

Summoning of jurors and return of venire. 1736-7, 10, § 2. 1741-2, 18, § 5. 1749-50, 5, § 5. 1756-7, 13, § 5. 1759-60, 29, § 5. 1784, 4, §§ 1, 2; 7, § 5. 1807, 140, § 6. R. S. 95, § 17. G. S. 132, § 20. P. S. 170, § 22. 1897, 515, § 7.

SECTION 24. The constable shall, four days at least before the time when the jurors are required to attend, summon each person who is drawn, by reading to him the venire with the indorsement thereon of his having been drawn, or by leaving at his place of abode a written notice of his having been drawn and of the time and place of the sitting of the court at which he is required to attend, and shall make a return of the venire with his doings thereon to the clerk of the court, before the sitting of the court by which it was issued.

143 MASS. 80.

GENERAL PROVISIONS.

Impanelling. 1807, 140, § 11. R. S. 95, §§ 20, 23. G. S. 132, §§ 23, 25, 26. 1881, 300. P. S. 170, §§ 26, 28-31. 1897, 515, § 8. 6 Met. 235. 135 Mass. 521.

SECTION 25. On the day when the jurors are summoned to attend at court for the trial of civil or criminal cases, except capital cases, the clerk of the court shall cause the name, place of abode and occupation of each person so summoned to be written on separate ballots, substantially of uniform size, and shall cause them to be placed in a box provided for the purpose. When a case is ready for trial the clerk in open court, after shaking the ballots thoroughly, shall draw them out in succession until the names of twelve are drawn who appear and are not excused or set aside. The twelve men so drawn shall be duly sworn and impanelled and shall be the jury to try the issue, and one of them shall be appointed foreman by the court. The ballots containing names of the jurors so sworn shall be kept apart by the clerk until the verdict of such jury has been recorded or such jury has been discharged, when such ballots shall be returned to the box. If a case is ready for trial before the verdict in the preceding case has been recorded or the jury discharged, the court may order a jury for the trial of such issue to be impanelled by the drawing in the manner aforesaid of ballots from those remaining in the box.

— in capital cases. 1873, 308. P. S. 170, § 32. 1897, 515, § 9.

SECTION 26. When a jury is to be impanelled for the trial of a capital case, the clerk of the court shall cause the name of each juror summoned therein to be written on a separate ballot and each ballot to be folded uniformly in such manner that the name written thereon shall not be visible, and shall cause such ballots to be placed in a box provided for the purpose. He shall then in open court draw the ballots in succession from said box, and the twelve persons whose names are upon the ballots first drawn and who are not excused or otherwise set aside, shall be sworn as the jury for the trial of the case.

Talesmen. 1699-1700, 1, § 4; 2, § 4; 3, § 5. 1784, 7, § 6. 1807, 140, § 7. R. S. 95, §§ 24-26. G. S. 132, §§ 27, 28. P. S. 170, §§ 32, 34. 6 Cush. 174.

SECTION 27. If, by reason of challenge or otherwise, a sufficient number of jurors duly drawn and summoned cannot be obtained for the trial of a case, the court shall cause jurors to be returned from the bystanders or from the county at large, to complete the panel, if there are on the jury not less than seven of the jurors who were originally drawn and summoned as before provided. The jurors from the bystanders shall be returned by the sheriff or his deputy or by a disinterested person appointed therefor by the court, and shall be such as are qualified and liable to be drawn as jurors.

1 SECTION 28. Upon motion of either party, the court shall, or
 2 the parties or their attorneys may under the direction of the court,
 3 examine on oath a person who is called as a juror therein, to learn
 4 whether he is related to either party or has any interest in the case,
 5 or has expressed or formed an opinion, or is sensible of any bias or
 6 prejudice, therein; and the objecting party may introduce other
 7 competent evidence in support of the objection. If the court finds
 8 that the juror does not stand indifferent in the case, another shall
 9 be called in his stead. 13 Met. 120. 5 Cnsh. 295. 6 Cush. 174.
 113 Mass. 297. 139 Mass. 56. 145 Mass. 242. 157 Mass. 195, 510.
 118 Mass. 531. 143 Mass. 136. 147 Mass. 585. 159 Mass. 57.

Examination
of jurors.
B. L. 30.
C. L. 152, § 3.
1736-7, 10, § 5.
1741-2, 18, § 7.
1749-50, 5, § 7.
1756-7, 13, § 7.
1758-60, 29, § 7.
1784, 7, § 8.
1807, 140, § 9.
R. S. 95, § 27.
G. S. 132, § 29.
P. S. 170, § 35.
1887, 149.
16 Pick. 153.

1 SECTION 29. Upon the trial of an indictment for a crime pun-
 2 ishable by death or imprisonment for life each defendant shall be
 3 entitled to twenty-two peremptory challenges of the jurors called
 4 to try the case, and in other criminal cases each defendant shall be
 5 entitled to two such challenges. In every criminal case the com-
 6 monwealth shall be entitled to as many such challenges as equal the
 7 whole number to which all the defendants in the case are entitled.
 8 In a civil case each party shall be entitled to two such challenges.
 9 Peremptory challenges shall be made before the commencement of
 10 the trial and may be made after the determination that a person
 11 called to serve as a juror stands indifferent in the case. 124 Mass. 32. 152 Mass. 397.

Peremptory
challenges.
1776-7, 32, § 13.
1795, 45, § 3.
R. S. 137, §§ 3-5.
G. S. 172, §§ 3, 4.
1862, 84, § 1.
1867, 254.
1869, 151.
1873, 317.
1875, 167.
P. S. 170, §§ 36,
37; 214, §§ 5, 6.
1895, 120.
11 Allen, 568.
103 Mass. 412.
107 Mass. 216.
111 Mass. 439.

1 SECTION 30. In indictments and penal actions for the recovery
 2 of a forfeiture, it shall not be a cause of challenge to a juror that
 3 he is liable to pay taxes in a county, city or town which may be
 4 benefited by such recovery. 9 Met. 572. 1 Gray, 472. 2 Allen, 402. 147 Mass. 583.

Interest not to
disqualify,
when.
R. S. 95, § 28.
G. S. 132, § 30.
P. S. 170, § 38.
5 Mass. 90.

1 SECTION 31. If a party knows of an objection to a juror in time
 2 to propose it before the trial and omits so to do, he shall not after-
 3 ward make the same objection, unless by leave of the court. 21 Pick. 471. 2 Met. 558. 2 Gray, 281. 121 Mass. 93.

Objections,
when made.
R. S. 95, § 29.
G. S. 132, § 31.
P. S. 170, § 39.
1 Pick. 38, 196.

1 SECTION 32. No irregularity in a writ of venire facias or in the
 2 drawing, summoning, returning or impanelling of jurors shall be
 3 sufficient to set aside a verdict, unless the objecting party has been
 4 injured thereby or unless the objection was made before the verdict. 139 Mass. 381.

Irregularities.
R. S. 95, § 30.
G. S. 132, § 32.
P. S. 170, § 40.
1 Pick. 38, 196.
2 Pick. 550.
9 Met. 572.

1 SECTION 33. If either party to a case at the sitting at which a
 2 verdict is returned, either before or after the trial, gives to any of
 3 the jurors who try the case anything by way of treat or gratuity,
 4 the court may, upon motion of the adverse party, set aside the
 5 verdict and award a new trial. 1807, 140, § 17. R. S. 95, § 31. G. S. 132, § 33. P. S. 170, § 41. 2 Allen, 556.

Gratuities.
1807, 140, § 17.
R. S. 95, § 31.
G. S. 132, § 33.
P. S. 170, § 41.
2 Allen, 556.

1 SECTION 34. If a jury, after due and thorough deliberation,
 2 return to court without having agreed on a verdict, the court may
 3 state anew the evidence or any part thereof, explain to them anew
 4 the law applicable to the case and send them out for further delib-
 5 eration; but if they return a second time without having agreed on
 6 a verdict, they shall not be sent out again without their own con-
 7 sent. 1807, 140, § 15. R. S. 95, § 32. G. S. 132, § 34. P. S. 170, § 42. 1 Pick. 337. 110 Mass. 70.

Jury not to be
sent out more
than twice,
unless, etc.
1807, 140, § 15.
R. S. 95, § 32.
G. S. 132, § 34.
P. S. 170, § 42.
1 Pick. 337.
110 Mass. 70.

115 Mass. 567.
116 Mass. 367.
122 Mass. 477.

sent, unless they ask from the court some further explanation of the law.

123 Mass. 255, 506.

164 Mass. 440.

View by jury.
1746-7, 6.
1784, 7, § 9.
1807, 140, § 8.
R. S. 95, § 33;
137, § 10.
G. S. 132, § 35;
172, § 9.
P. S. 170, § 43;
214, § 11.
5 Cush. 298.
134 Mass. 499.
157 Mass. 579.
174 Mass. 245.

SECTION 35. The court may, upon motion, allow the jury in a civil case to view the premises or place in question or any property, matter or thing relative to the case if the party making the motion advances an amount sufficient to defray the expenses of the jury and the officers who attend them in taking the view; which expenses shall be taxed as costs, if the party who advanced them prevails. The court may order a view by a jury impanelled to try a criminal case.

PENALTIES.

Penalty for neglect to attend.
C. L. 55, § 2.
1694-5, 24, §§ 2-4.
1698, 13.
1741-2, 18, § 6.
1749-50, 5, § 6.

SECTION 36. A person duly drawn and summoned as a juror in a court who neglects to attend without sufficient cause shall be punished by a fine of not more than forty dollars, which shall be imposed by the court to which the juror was summoned, to the use of the county in which the offence is committed.

1756-7, 13, § 6.
1759-60, 29, § 6.

1784, 4, §§ 1, 2; 7, § 7.
1802, 92, § 3.

1807, 140, § 17.
R. S. 95, § 19.

G. S. 132, § 36.
P. S. 170, § 44.

— on officers, etc., for neglect.
1694-5, 24, §§ 1, 4.
1699-1700, 1, § 4;
2, § 4; 3, § 5.
1784, 4, §§ 1, 2;
7, §§ 3, 4.
1807, 140, § 17.
R. S. 95, § 39.

SECTION 37. If, by reason of the neglect of a person upon whom any duty is imposed by the provisions of this chapter, jurors are not duly drawn and summoned to attend a court, he shall be punished by a fine of not more than twenty dollars, which shall be imposed by the court to which they should have been summoned, to the use of the county in which the offence is committed.

G. S. 132, § 37.

P. S. 170, § 45.

— in certain other cases.
R. S. 95, § 40.
G. S. 132, § 38.
P. S. 170, § 46.

SECTION 38. If such neglect occurs with regard to jurors required to serve on any occasion other than in the supreme judicial court or the superior court, the officer before whom the jurors were required to appear shall report the fact to the superior court for the same county, which, after an examination and a hearing, may impose the fine.

— for fraud in drawing jurors.
1793, 63, § 5.
1807, 140, § 17.
R. S. 95, § 41.
G. S. 132, § 39.
P. S. 170, § 47.
1894, 514, § 4.

SECTION 39. Whoever is guilty of fraud in the drawing of jurors, either by tampering with the jury box previous to a draft or in drawing a juror, or in returning to the box the name of a juror lawfully drawn out and drawing or substituting another in his stead, or in striking a name from the jury list, or in any other way, shall be punished by a fine of not more than five hundred dollars.

SPECIAL JURIES.

Special juries.
R. S. 95, § 42.
G. S. 132, § 40.
P. S. 170, § 48.

SECTION 40. The provisions of this chapter shall not affect the power and duty of any officer or magistrate to summon and impanel jurors when authorized by other provisions of law.

CHAPTER 177.

OF JUDGMENT AND EXECUTION.

SECTIONS 1-23. — Entering Judgment; Awarding and Issuing Execution.

SECTIONS 24-26. — Special Judgments against Bankrupts or Insolvents.

SECTION 27. — Set-Off of Executions.

SECTIONS 28-35. — Levy of Execution, and Personal Property Exempt Therefrom.

SECTIONS 36-45. — Sale of Personal Property taken on Execution.

SECTIONS 46-51. — Levy on Corporate Shares.

SECTION 52. — Levy on Terms for Years.

SECTIONS 53, 54. — Suspension of Levy.

SECTIONS 55-57. — Death, etc., of Officer or Party after Commencement of Levy.

SECTION 58. — Penalty on Officer for Detaining Money Collected.

ENTERING JUDGMENT; AWARDING AND ISSUING EXECUTION.

1 SECTION 1. Judgments in civil actions and proceedings in the
 2 supreme judicial court shall be entered on motion, unless the court
 3 by general or special order otherwise orders. Judgments in civil
 4 actions and proceedings in the superior court, which are ripe for
 5 judgment, shall, unless the court by general or special order other-
 6 wise orders, be entered by the clerk on the first Monday of each
 7 month, or on the next day thereafter if said Monday is a legal
 8 holiday, unless the party entitled thereto otherwise requests in
 9 writing.

Entry of judg-
 ment.
 R. S. 97, § 1.
 1852, 312, § 11.
 G. S. 133, § 1.
 P. S. 171, § 1.
 161 Mass. 56.
 168 Mass. 297.
 176 Mass. 56.

1 SECTION 2. Judgment in civil actions and proceedings ripe for
 2 judgment in police, district and municipal courts shall be entered
 3 at ten o'clock in the forenoon on Friday of each week, but if a legal
 4 holiday occurs on Friday, at ten o'clock in the forenoon of the
 5 Thursday preceding; or it may be entered at any time in a case
 6 ripe for judgment upon notice and motion.

— in inferior
 courts.
 1897, 431.
 1898, 488.

1 SECTION 3. Police, district and municipal courts may by rule
 2 establish the time for the entry of judgment in actions of summary
 3 process under the provisions of chapter one hundred and eighty-
 4 one which are ripe for judgment.

— in summary
 process.
 1898, 488.

1 SECTION 4. Every judgment, order or decree of the supreme
 2 judicial court or the superior court shall bear date of the year,
 3 month and day when it is entered: but the court may order it to
 4 be entered as of an earlier day than the day of the entry.

7 Mass. 395.
 12 Cush. 319.

106 Mass. 341.
 137 Mass. 221.

155 Mass. 86.
 173 Mass. 212.

Judgment
 nunc pro tunc.
 1842, 89, § 2.
 G. S. 115, § 14;
 133, § 7.
 P. S. 153, § 20;
 171, § 7.
 1885, 384, § 13.

1 SECTION 5. In an action upon a promissory note or other con-
 2 tract in which the amount due appears to be undisputed, the debt
 3 or damages may be assessed and ascertained by the clerk under a
 4 general order of the court or by a special reference of the case to
 5 him. The judgment in either case shall be entered in the same

Assessment of
 damages by the
 clerk.
 R. S. 97, § 4.
 G. S. 133, § 4.
 P. S. 171, § 4.

form as if it had been awarded by the court on an assessment or computation made by the court. 6
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Judgment on default.

R. S. 100, § 6.
1851, 255, § 1.
G. S. 133, § 5.
P. S. 171, § 5.
12 Cush. 486.
13 Allen, 217.
121 Mass. 347.

SECTION 6. In an action against two or more defendants upon a contract express or implied, the plaintiff shall be entitled to judgment against such defendants as are defaulted and against those who upon trial are found liable, although it is found that all the defendants are not jointly liable. 1
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164 Mass. 504.

Separate executions against different defendants.

1851, 255, § 2.
G. S. 133, § 6.
P. S. 171, § 6.

SECTION 7. If in such action any defendants are defaulted, and upon trial any of the others are found liable, the court shall render judgment both against those defendants defaulted and those found liable for the debt or damages, with costs to the time of the default, and against those who defend, for all costs which accrue after the default; and shall issue separate executions on such judgment. 1
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Interest on judgments, etc.

1847, 153.
1849, 124.
G. S. 133, § 8.
P. S. 171, § 8.
2 Allen, 562.
6 Allen, 244.
116 Mass. 196.
136 Mass. 344.
139 Mass. 362.

SECTION 8. When judgment is made up upon an award of county commissioners, a committee or referees, or upon the report of an auditor or master in chancery, or upon the verdict of a jury, interest shall be computed upon the amount of the award, report or verdict, from the time when made to the time of making up the judgment. Every judgment for the payment of money shall bear interest from the day of its rendition. The warrant or execution issued on a judgment for the payment of money shall specify the day upon which judgment is rendered, and shall require the collection or satisfaction thereof with interest from the day of its rendition. 1
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Judgment on forfeiture of a penalty.

1698, 22, § 1.
1735-6, 2.
1785, 22, § 1.
1798, 77, § 6.
R. S. 100, § 8.
G. S. 133, § 9.
P. S. 171, § 9.
11 Gray, 212.

SECTION 9. If in an action for a breach of the condition of a bond, or to recover a penalty for the non-performance of a covenant, contract or agreement, it is found that the condition has been broken or the penalty forfeited, judgment shall be entered for the penal sum, but no execution shall issue thereon except as is provided in the following sections. 1
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12 Allen, 243.

97 Mass. 15.

98 Mass. 516.

136 Mass. 174.

155 Mass. 203.

— amount of execution.

1698, 22, § 1.
1785, 22, § 1.
1798, 77, § 6.
R. S. 100, § 9.
G. S. 133, § 10.
P. S. 171, § 10.
13 Gray, 157.
100 Mass. 191.
105 Mass. 48.
135 Mass. 591.

SECTION 10. The court shall award an execution for so much of the penal sum as is then due and payable in equity and good conscience for the breach of the condition or other non-performance of the contract. The amount shall be determined by the court, unless an assessment by a jury is claimed under the provisions of section seventy-four of chapter one hundred and seventy-three or is ordered by the court. 1
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148 Mass. 502.

152 Mass. 569.

155 Mass. 203.

Scire facias to recover further damages.

1735-6, 2.
1798, 77, § 6.
R. S. 100, § 10.
G. S. 133, § 11.
P. S. 171, § 11.

SECTION 11. If a further amount afterward becomes due on such bond or other contract, the plaintiff, his executor or administrator may have a writ of scire facias on the judgment from the court in which it was rendered against the original defendant, his executor, administrator, heirs, devisees or assigns, stating a further breach of the contract and summoning the adverse party to show cause why execution should not be awarded upon the judgment for the damages caused by such further breach. 1
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1 SECTION 12. The amount due in such action shall be determined
2 and execution awarded in the same manner as in the original action ;
3 and such proceedings may be repeated upon further breaches until
4 the whole of the penalty is exhausted.

Proceedings in
actions for fur-
ther damages.
1798, 77, § 6.
R. S. 100, § 11.
G. S. 133, § 12.
P. S. 171, § 12.

1 SECTION 13. The provisions of the four preceding sections shall
2 not prevent a person from bringing an action for the breach of a
3 covenant or other contract, instead of suing for the penalty by
4 which the performance of the covenant or contract was secured.

Action for
damages in
stead of
penalty.
1798, 77, § 6.
R. S. 100, § 12.
G. S. 133, § 13.

P. S. 171, § 13.

1 SECTION 14. If a judgment is rendered for the plaintiff by a
2 court or trial justice in an action founded on a judgment rendered
3 by a different court or trial justice, execution shall not issue until
4 the plaintiff files with the court or trial justice rendering the judg-
5 ment in the later action a transcript of the record of the judgment
6 in the earlier action under the seal of the court or justice rendering
7 it, attested by the clerk of such court or by such justice.

Executions in
actions on
judgments.
1898, 489.

1 SECTION 15. If judgment is rendered in a local action which
2 has been brought in an erroneous venue, the court shall cause its
3 writ of possession or other writ of execution to be directed to the
4 sheriff of the proper county.

Execution, if
action in erro-
neous venue.
1851, 233, § 116.
1852, 312, § 79.
G. S. 133, § 14.
P. S. 171, § 14.

102 Mass. 370.

130 Mass. 335.

1 SECTION 16. No execution shall be issued within twenty-four
2 hours after the entry of judgment.

R. S. 97, § 5.

G. S. 133, § 15.

P. S. 171, § 15.

1784, 28, § 15.
8 Met. 496.

— when to
issue.
C. L. 3, § 9.
1701-2, 5, § 10.

1 SECTION 17. Executions issued by a police, district or munic-
2 ipal court or trial justice may be served and shall be obeyed in
3 every county to which they are directed.

1894, 398, § 2; 431. 1895, 380.

— to be served
in any county.
1876, 227, § 2.
P. S. 154, § 32.
1893, 396, § 17.

1 SECTION 18. An original execution shall not be issued after the
2 expiration of one year after the party is first entitled to take out
3 the same ; and an alias or other successive execution shall not be
4 issued after the expiration of five years from the return day of that
5 which preceded it.

G. S. 133, § 16.

P. S. 171, § 16.

138 Mass. 72.

— to issue
within one
year, etc.
1692-3, 24, § 3.
1741-2, 22.
1772-3, 32.
1773-4, 16, § 1.
1783, 57, § 1.
R. S. 97, § 6.
1859, 16.

1 SECTION 19. If a judgment remains unsatisfied after the expira-
2 tion of the time for taking out execution thereon, the creditor may
3 have a writ of scire facias to obtain a new execution, or he may at
4 any time after the judgment, subject to the provisions of section
5 nineteen of chapter two hundred and two, have an action of con-
6 tract thereon.

G. S. 133, § 17.

P. S. 171, § 17.

114 Mass. 76.

174 Mass. 550.

Remedy after
time for taking
execution.
1692-3, 24, § 3.
1741-2, 22.
1772-3, 32.
1773-4, 16, § 1.
1783, 57, § 1.
1795, 61, § 1.
R. S. 97, § 8.

1 SECTION 20. If an execution is returned satisfied in whole or in
2 part by the sale of property not liable to such execution, and if
3 damages are recovered against the judgment creditor or the officer
4 who served the execution on account of the seizure and sale of such
5 property, the creditor may have a writ of scire facias on his judg-
6 ment, and shall thereupon be entitled to a new execution for the
7 amount then remaining due to him.

Ineffectual
levy.
1835, 145.
R. S. 97, § 43.
G. S. 133, § 18.
P. S. 171, § 18.
S Allen, 429.

Ineffectual
levy on
stockholder.
1851, 213.
G. S. 133, § 19.
P. S. 171, § 19.

SECTION 21. If an execution against a corporation is satisfied 1
in whole or in part by service or levy on the person or property 2
of a member thereof, and the property levied on or damages for 3
the service or levy are subsequently recovered by such member 4
from the officer or judgment creditor, the creditor may have a writ 5
of scire facias on his judgment, and shall thereupon be entitled to a 6
new execution for the amount then remaining due to him. 7

Forms of
executions.
C. L. 320, § 2.
1783, 58, § 1.
1784, 28.
R. S. 73, § 54;
97, §§ 10, 11.
1853, 269, § 1.
G. S. 133, §§ 20,
21.
P. S. 171, §§ 20,
21.
10 Met. 330.
3 Cush. 460.
122 Mass. 133.
161 Mass. 135.

SECTION 22. The forms of execution shall be the same as have 1
heretofore been established by law and the usage and practice of 2
the courts. Executions issued upon judgments in civil actions in 3
favor of the commonwealth shall be in form like those in favor of 4
natural persons. Executions issued by a police, district or municipi- 5
pal court or a trial justice for an amount as damages exceeding 6
twenty dollars shall be so framed as to direct a levy upon the 7
lands and tenements of the debtor. Alterations in the forms may 8
from time to time be made by the courts, subject to the final 9
control of the supreme judicial court, which may by general rules 10
regulate such changes in all courts of the commonwealth. 11

Return of
execution.
1736-7, 19, § 1.

SECTION 23. All executions shall be made returnable within 1
sixty days after their date. 2

1783, 57, § 1.
R. S. 97, § 9.

1850, 209.
1852, 312, § 83.

G. S. 133, § 22.
P. S. 171, § 22.

1763-4, 7.

2 Met. 587.
163 Mass. 79.

SPECIAL JUDGMENTS AGAINST BANKRUPTS OR INSOLVENTS.

Special judg-
ments against
bankrupts or
insolvents.
1885, 59.
1892, 269.
140 Mass. 69.
175 Mass. 559.

SECTION 24. If a plaintiff would be entitled to a judgment or 1
to a decree, except for the bankruptcy or insolvency of the debtor 2
or his discharge therein, and if, more than four months prior to the 3
commencement of proceedings in bankruptcy, or, in voluntary pro- 4
ceedings in insolvency, more than four months prior to the time of 5
the first publication of the notice of the issuing of the warrant, or, 6
in involuntary proceedings, more than four months prior to the first 7
publication of the notice of the filing of the petition, any property, 8
estate, interest or money of a debtor has been attached, or brought 9
within the control of a court of equity by proceedings under the 10
provisions of clause seven of section three of chapter one hundred 11
and fifty-nine, by other proceedings in equity, or by payment into 12
court, the court may at any time upon motion enter a special judg- 13
ment or decree for the plaintiff, for the amount of his debt or dam- 14
ages and costs, or for such other relief as he may be entitled to, to 15
be enforced in the first instance only against the property, estate, 16
interest or money, so attached, or brought within the control of a 17
court of equity. If such property, estate, interest or money shall 18
be insufficient to satisfy the judgment or decree in full, the court 19
may thereafter, if the debtor's discharge shall be refused, or if he 20
shall unreasonably delay to prosecute said proceedings to a dis- 21
charge, order an alias or other successive execution or other process 22
to be issued upon such judgment or decree for such portion thereof 23
as remains unsatisfied. The creditor may also in case of such 24
refusal or delay have a writ of scire facias or action as provided in 25
section nineteen. The provisions of this section shall not impair 26
the powers which courts of equity may otherwise exercise. 27

1 SECTION 25. If a plaintiff would be entitled to a judgment, ex-
 2 cept for the bankruptcy or insolvency of a defendant, or his dis-
 3 charge therein, who has given a bond to dissolve an attachment
 4 made more than four months prior to the commencement of pro-
 5 ceedings in bankruptcy, or, in voluntary proceedings in insolvency,
 6 more than four months prior to the first publication of the notice
 7 of the issuing of the warrant, or, in involuntary proceedings in in-
 8 solvency, more than four months prior to the first publication of
 9 the notice of the filing of the petition, or, in proceedings in com-
 10 position in insolvency in which no assignment has been made, more
 11 than four months prior to the notice by the register to the creditors
 12 of the debtor's proposal of composition, the court may at any time,
 13 upon motion, enter a special judgment for the plaintiff, which shall
 14 be a sufficient judgment, within the meaning of chapter one hun-
 15 dred and sixty-seven, to enable him to maintain an action against
 16 the sureties on said bond.

Special judg-
 ment, if insol-
 vent, etc., has
 given bond to
 dissolve an
 attachment.
 1875, 68, § 1.
 1880, 246, § 8.
 P. S. 171, § 23.
 1888, 405, § 1.
 100 Mass. 450.
 112 Mass. 223.
 113 Mass. 382.
 122 Mass. 67.
 124 Mass. 115.
 128 Mass. 228.
 132 Mass. 40,
 203.
 170 Mass. 179.
 175 Mass. 559.

1 SECTION 26. The court may enter a like judgment, with like
 2 effect, if a defendant who petitions for a review is adjudged a bank-
 3 rupt, or against whose estate a warrant in insolvency is issued, or
 4 who is discharged upon proceedings in composition if no assign-
 5 ment has been made, before or after having given the security re-
 6 quired upon such petition, and if the attachment in the original
 7 action was not made within the time named in the preceding
 8 section.

— upon peti-
 tion for
 review.
 1875, 68, § 3.
 1880, 246, § 8.
 P. S. 171, § 24.
 1888, 405, § 3.

SET-OFF OF EXECUTIONS.

1 SECTION 27. Executions between the same parties may, if re-
 2 quired by either party, be set off one against the other. In such
 3 case, the debtor in an execution which has been delivered to an of-
 4 ficer to be served shall deliver his execution to the same officer,
 5 whether it is directed to him or to another officer, and the officer
 6 shall apply the smaller execution, so far as it will extend, to
 7 the satisfaction of the larger execution: and the balance due on
 8 the larger execution may be collected and paid by him as if there
 9 had been no set-off: but such set-off shall not be allowed:

Set-off of exe-
 cutions.
 1732-3, 12, § 2.
 1810, 84.
 1830, 124.
 R. S. 97, §§ 74-
 76.
 G. S. 133, §§ 23-
 25.
 P. S. 171, §§ 25-
 27.
 7 Mass. 140.
 105 Mass. 333.

10 First, If the creditor in one of the executions is not, in the
 11 same capacity and trust, the debtor in the other. 9 Met. 509.

12 Second, If the amount due on the first execution was lawfully
 13 and in good faith assigned to another person before the creditor in
 14 the second execution became entitled to the amount due thereon. 13 Met. 482.

15 Third, If there are several creditors in one execution, from a
 16 part of whom only the amount due on the other is due.

17 Fourth, If there are several debtors in one execution, to a part
 18 of whom only the amount due on the other is due.

19 Fifth, As to the portion of either execution which is due to the
 20 attorney out of the taxable costs therein. 13 Mass. 525.
 22 Pick. 210.

LEVY OF EXECUTION, AND PERSONAL PROPERTY EXEMPT THERE- FROM.

1 SECTION 28. If an execution is in the alternative, so that it
 2 may be lawfully served in any of two or more ways, the creditor
 3 or his attorney may require the officer to serve it in any of said
 Creditor may
 direct mode of
 service.
 R. S. 97, § 12.
 G. S. 133, § 26.

- 16 Sixth, Materials and stock designed and procured by him and 1855, 264.
 17 necessary for carrying on his trade or business, and intended to be 6 Gray, 298.
 18 used or wrought therein, not exceeding one hundred dollars in 7 Gray, 69.
 19 value. 6 Allen, 292. 9 Allen, 156. 11 Allen, 582. 9 Gray, 62.
 20 Seventh, Provisions necessary and procured and intended for 10 Gray, 242.
 21 the use of the family, not exceeding fifty dollars in value. 5 Allen, 148.
- 22 Eighth, One pew occupied by him or his family in a house of 1851, 262.
 23 public worship; but this provision shall not prevent the sale of a
 24 pew for the non-payment of a tax legally laid thereon.
- 25 Ninth, The boats, fishing tackle and nets of fishermen, actually 1859, 142.
 26 used by them in the prosecution of their business, not exceeding
 27 one hundred dollars in value.
- 28 Tenth, The uniform of an officer or soldier in the militia and 1809, 108, § 11.
 29 the arms and accoutrements required by law to be kept by him.
- 30 Eleventh, Rights of burial and tombs while in use as reposi- 1822, 93, § 8.
 31 tories for the dead.
- 32 Twelfth, One sewing machine, in actual use by each debtor or by 1860, 65.
 33 his family, not exceeding one hundred dollars in value. 3 Allen, 570.
 34 Thirteenth, Shares in co-operative associations formed under 6 Allen, 292.
 35 the provisions of chapter one hundred and ten, not exceeding
 36 twenty dollars in value in the aggregate. 1870, 224, § 53.

1 SECTION 35. If there is reasonable doubt as to the ownership Indemnifica-
 2 of the property, or as to its liability to be taken on the execution, tion of officer.
 3 the officer may require sufficient security of the creditor to indem- R. S. 97, § 18.
 4 nify him for taking it. G. S. 133, § 33.
 P. S. 171, § 35.
 150 Mass. 531.

SALE OF PERSONAL PROPERTY TAKEN ON EXECUTION.

1 SECTION 36. Personal property seized on execution shall be Sale of prop-
 2 safely kept by the officer, at the expense of the debtor, for four erty on execu-
 3 days at least; and shall be sold by public auction within fourteen tion.
 4 days next after the seizure, except as hereinafter provided, unless 1772-3, 12.
 5 the debtor before such sale redeems it by otherwise satisfying the 1783, 57, § 5.
 6 execution. R. S. 97, § 23.
 G. S. 133, § 34.
 P. S. 171, § 36.
 14 Mass. 473.
 7 Gray, 416.

1 SECTION 37. The officer shall give notice of the time and place Notice of sale.
 2 of the sale, by causing notices thereof to be posted forty-eight 1772-3, 12.
 3 hours at least before the time of sale in a public place in the city 1783, 57, § 5.
 4 or town in which the sale is to be made, or by causing an advertise- R. S. 97, § 24.
 5 ment of the time and place of sale to be published in a newspaper G. S. 133, § 35.
 6 published in the county. P. S. 171, § 37.

1 SECTION 38. If the value of such property to be sold exceeds —if value
 2 three hundred dollars, the officer shall, at the request of either exceeds three
 3 party, give notice of the sale by advertisement in a newspaper as hundred
 4 provided in the preceding section; and the sale may be made at dollars.
 5 any time after the expiration of four days, and within thirty days R. S. 97, § 25.
 6 after the seizure on execution. G. S. 133, § 36.
 P. S. 171, § 38.

1 SECTION 39. If, at the time appointed for the sale, the officer Adjournment
 2 considers it for the interest of all persons concerned to postpone the of sale.
 R. S. 97, § 26.

G. S. 133, § 37.
P. S. 171, § 39.
9 Mass. 265.

sale, he may adjourn it for not more than seven days, and so from time to time, until the sale is completed; giving notice of every such adjournment by a public declaration thereof at the time and place previously appointed for the sale.

Adjournment
upon injunc-
tion.
1884, 175.

SECTION 40. If a sale of such property or execution is enjoined, it may be adjourned by the court granting the injunction to await the further order of the court and upon the dissolution of the injunction, the court may order the sale to proceed, and may order additional notice of the adjourned sale.

Re-sale.
R. S. 97, § 27.
G. S. 133, § 38.
P. S. 171, § 40.
7 Mass. 392.

SECTION 41. If the highest bidder for an article at such sale refuses to take and pay for it, the officer shall sell it again by auction, at the same time or within ten days thereafter, giving notice of the second sale; and he shall account for what he receives on the second sale, and for any damages recovered of the first bidder for a loss on the re-sale, as for so much received on the execution.

Return of exe-
cution. Lia-
bility for
fraud.
1783, 57, § 5.
R. S. 97, § 28.
G. S. 133, § 39.
P. S. 171, § 41.
102 Mass. 427.

SECTION 42. The officer who makes such sale shall in his return of the execution particularly describe the property sold and the amount for which each article was sold; and if he is guilty of fraud in the sale or return, he shall be liable in an action of tort to the party injured for five times the amount of the actual damage sustained by reason of such fraud.

Disposition of
proceeds of
sale.
1772-3, 12.
1783, 57, § 5.
R. S. 97, § 29.
G. S. 133, § 40.

SECTION 43. The officer shall apply the money arising from the sale to paying the charges and satisfying the execution, and shall return the residue, if any, to the debtor on demand, or shall apply and pay over the same as provided in the following sections.

P. S. 171, § 42.

126 Mass. 101.

— among two
or more
creditors.
1804, 83, § 6.
1819, 87.
R. S. 97, § 30.
G. S. 133, § 41.
P. S. 171, § 43.

SECTION 44. If the property sold on execution has been attached by another creditor, or seized on another execution, either by the same or another officer, or if before the payment of such residue to the debtor another writ of attachment or execution against him is delivered to the officer who made the sale, the proceeds of the sale shall be applied to the discharge of the several judgments in the order in which the respective writs of attachment or execution were served, and the residue, if any, shall be returned to the debtor.

— upon suc-
cessive attach-
ments.
1804, 83, § 6.
1819, 87.
R. S. 97, § 31.
G. S. 133, § 42.
P. S. 171, § 44.
9 Mass. 265.

SECTION 45. If an attachment or seizure on execution is made of a share in an incorporated company or of any other property which may be attached without taking and keeping the exclusive possession thereof, and if the same property is subsequently attached or taken on execution by another officer, he shall give notice thereof to the officer who makes the sale under the first attachment or seizure; and if the latter, before he receives such notice, pays to the debtor the balance of the proceeds of the sale, he shall not be liable therefor to the person who claims under such subsequent attachment or seizure.

LEVY ON CORPORATE SHARES.

1 SECTION 46. The shares or interest of a stockholder in a corpo-
 2 ration which is established under the laws of this commonwealth,
 3 or of the United States and located or having a general office in
 4 this commonwealth, may be taken on execution and sold as herein-
 5 after provided.

Levy on shares
 in corpora-
 tions.
 1804, 83, § 1.
 R. S. 97, § 36.
 G. S. 133, § 43.
 1870, 201, § 1.
 P. S. 171, § 45.

1 SECTION 47. If the property has not been attached in the action
 2 in which the execution has been issued, the officer shall leave an
 3 attested copy of the execution with the clerk, treasurer or cashier
 4 of the company, if there is any such officer; otherwise, with any
 5 officer or person who has the custody of the books and papers of the
 6 corporation: and the property shall be considered as seized on ex-
 7 ecution when the copy is so left, and shall be sold in like manner
 8 as personal property is sold on execution.

Proceedings.
 1804, 83, § 1.
 R. S. 97, § 37.
 G. S. 133, § 44.
 P. S. 171, § 46.

1 SECTION 48. If the shares or interest have been attached in the
 2 same action, the officer shall proceed in seizing and selling it on the
 3 execution in the same manner as in selling other personal property.

Same subject.
 1804, 83, § 3.
 R. S. 97, § 38.
 G. S. 133, § 45.
 P. S. 171, § 47.

1 SECTION 49. The officer of the company who is appointed to
 2 keep a record or account of the shares or interest of the stockholders
 3 therein shall, when the execution is exhibited to him, give a certifi-
 4 cate of the number of shares or amount of the interest held by the
 5 judgment debtor, in like manner and upon the like penalty as is
 6 provided in chapter one hundred and sixty-seven relative to a writ
 7 of attachment.

Officer of com-
 pany to dis-
 close the shares
 of debtor.
 1804, 83, § 4.
 R. S. 97, § 39.
 G. S. 133, § 46.
 P. S. 171, § 48.

1 SECTION 50. An attested copy of the execution and of the
 2 return thereon shall, within fourteen days after the sale, be left with
 3 the officer of the company whose duty it is to record transfers of
 4 shares; and the purchaser shall thereupon be entitled to a certifi-
 5 cate of the shares bought by him upon paying the fees therefor
 6 and for recording the transfer.

New certifi-
 cate to pur-
 chaser.
 1804, 83, § 1.
 R. S. 97, § 40.
 G. S. 133, § 47.
 P. S. 171, § 49.

1 SECTION 51. If the shares or interest of the judgment debtor are
 2 attached in the action upon which the execution issued, the pur-
 3 chaser shall be entitled to all the dividends which have accrued
 4 after the attachment.

Dividends
 after attach-
 ment.
 1804, 83, § 1.
 R. S. 97, § 41.

G. S. 133, § 48.

P. S. 171, § 50.

LEVY ON TERMS FOR YEARS.

1 SECTION 52. Terms for years, if the original lease was for one
 2 hundred years or more, and fifty years or more thereof remain
 3 unexpired, shall be regarded as real estate, for the levy of an ex-
 4 ecution thereon. Other terms for years shall be seized and sold
 5 on execution in like manner as personal property, except that the
 6 officer before selling the same shall give fourteen days' notice of the
 7 time and place of sale, by leaving a notice thereof in writing with
 8 the debtor personally or at his last and usual place of abode, and
 9 by posting a notice on the leased premises.

Levy on terms
 for years.
 1884, 162, § 1.
 R. S. 97, § 33.
 1847, 267, § 4.
 G. S. 133, § 49.
 P. S. 171, § 51.
 142 Mass. 212.

SUSPENSION OF LEVY.

Suspension of
levy.
R. S. 97, § 35.
G. S. 133, § 50.
P. S. 171, § 52.

SECTION 53. If personal property has been seized on execution, and the further service of the execution is suspended by reason of a prior attachment or seizure of the same property, such property shall remain bound by such later seizure until it is sold, in whole or in part, under the prior attachment or seizure, or until that attachment or seizure is dissolved.

Same subject.
R. S. 97, § 35.
G. S. 133, § 51.
P. S. 171, § 53.
111 Mass. 84.

SECTION 54. If such property is sold in part under the prior attachment or seizure, or if that attachment or seizure is dissolved, the property or such part thereof as remains undisposed of shall continue bound for thirty days thereafter by the seizure on the execution; and the service of the execution may be completed as if the estate had been first seized thereon within said thirty days although the return day of the execution has passed.

DEATH, ETC., OF OFFICER OR PARTY AFTER COMMENCEMENT OF LEVY.

Death, etc., of
officer after
beginning of
levy.
R. S. 97, § 13.
G. S. 133, § 52.
P. S. 171, § 54.
1885, 125.
2 Pick. 276.
148 Mass. 501.

SECTION 55. If an officer, who has begun to serve an execution, dies or becomes incapable of completing the service and return thereof, the service may be completed by any other officer qualified to serve the execution; or in case of illness or absence, the judgment creditor or the officer who began to serve the execution may delegate any other officer qualified to serve the execution temporarily to act for him during said illness or absence. If the first officer has not made a certificate of his doings, the second officer shall certify whatever he finds to have been done by the first officer and shall add thereto a certificate of his own doings.

Removal, etc.,
of officer after
beginning of
levy.
R. S. 97, § 14.
G. S. 133, § 53.
P. S. 171, § 55.

SECTION 56. If an officer has begun to serve an execution, he may complete the service and return thereof, although he is removed from office or although the service cannot be completed until after the return day.

Death of
party after
beginning of
levy.
R. S. 97, § 15.
G. S. 133, § 54.
P. S. 171, § 56.
9 Mass. 209.
3 Met. 253.

SECTION 57. If either party dies after any property, real or personal, has been seized on execution, the service thereof may be completed in like manner and with the same effect as if both parties were living and the officer may appoint an appraiser for the deceased party.

PENALTY ON OFFICER FOR DETAINING MONEY COLLECTED.

Penalty for de-
taining money
collected.
1736-7, B, § 2.
1784, 44, § 3.
R. S. 97, § 73.
G. S. 133, § 56.

SECTION 58. An officer who, upon demand by the creditor, unreasonably neglects to pay money collected by him on execution shall forfeit to the creditor five times the lawful interest of the money from the time of the demand until it is paid.

P. S. 171, § 57.

7 Mass. 464.

4 Met. 149.

CHAPTER 178.

OF THE LEVY OF EXECUTIONS ON LAND.

- SECTIONS 1, 2. — Land Subject to Levy.
- SECTIONS 3-6. — Proceedings upon Levy.
- SECTIONS 7-25. — Levy by Set-Off.
- SECTIONS 26-30. — Levy by Sale.
- SECTIONS 31, 32. — Suspension of Levy.
- SECTIONS 33-42. — Right of Redemption.
- SECTIONS 43-55. — General Provisions.

LAND SUBJECT TO LEVY.

1 SECTION 1. All the land of a debtor in possession, remainder
2 or reversion, all his rights of entry into land and of redeeming
3 mortgaged land, and all such land and rights which have been
4 fraudulently conveyed by him with intent to defeat, delay or defraud
5 his creditors, or which have been purchased or directly or indirectly
6 paid for by him but the record title of which has been retained in the
7 vendor or conveyed to a third person with intent to defeat, delay
8 or defraud the creditors of the debtor, or on a trust for him, express
9 or implied, whereby he is entitled to a present conveyance, may,
10 except as provided in chapter one hundred and thirty-one, be taken
11 on execution for his debts as hereinafter provided.

Land and rights liable to be taken.
1636, 10, §§ 1, 3.
1716-17, 3, § 1.
1735-6, 9, § 1.
1783, 37, §§ 2, 4.
R. S. 73, §§ 1, 31.
1844, 167, § 1.
1855, 453.
G. S. 103, § 1.
P. S. 172, § 1.
11 Gray, 217.
1 Allen, 235.
13 Allen, 257.
114 Mass. 520.
125 Mass. 11.
126 Mass. 278.

150 Mass. 289. 151 Mass. 71. 175 Mass. 373.

1 SECTION 2. Estates tail may be taken on execution in like
2 manner as estates in fee simple; and whoever lawfully holds such
3 land under the execution shall have an estate in fee simple therein.

Estates tail.
1791, 60, § 2.
R. S. 73, § 2.
G. S. 103, § 2.
P. S. 172, § 2.
3 Gray, 162.

PROCEEDINGS UPON LEVY.

1 SECTION 3. When an officer takes land on execution, he shall
2 give notice of the taking to the debtor, if found within his precinct,
3 cause the land to be appraised as hereinafter provided, if an ap-
4 praisal is required, and shall complete the levy without unnecessary
5 delay.

Notice and appraisal.
R. S. 73, § 22.
G. S. 103, § 24.
P. S. 172, § 3.
111 Mass. 84.
124 Mass. 172.
130 Mass. 163.

1 SECTION 4. If land which was not attached on mesne process in
2 the action in which the execution issued is taken on execution, the
3 officer shall forthwith deposit in the registry of deeds for the county
4 or district in which the land lies a copy of the execution with a
5 memorandum thereon that the execution is in his hands for the
6 purpose of taking the land of the defendant, and no such taking
7 shall be valid against a purchaser in good faith, for value and with-
8 out notice, before such copy is deposited.

Taking of land not attached.
1862, 190, §§ 1, 4.
1871, 123.
1873, 297, § 1.
P. S. 172, § 4.
143 Mass. 195.

1 SECTION 5. The register shall note on every such copy the day,
2 hour and minute when he receives it and shall file it in his office.
3 He shall enter in the book, kept by him for the entry of attach-
4 ments of land, the names of the plaintiff and defendant as stated in
5 the copy and the time when the copy was deposited.

Entries by register.
1862, 190, § 2.
P. S. 172, § 5.
13 Allen, 257.

Fees.

1862, 190, § 3.
P. S. 172, § 6.

SECTION 6. The officer shall be entitled to receive for travel
four cents a mile from the place where he received the execution to
the office of the register and his fee for the copy. The fee of the
register shall be twenty-five cents, which shall be paid when the
copy is deposited in his office.

LEVY BY SET-OFF.

Appointment
of appraisers.1716-17, 3, § 1.
1719-20, 9, § 1.
1783, 57, § 2.
R. S. 73, §§ 3,
22.

1851, 257.

1852, 256.

G. S. 103, §§ 3,

24.

P. S. 172, § 7.

8 Mass. 113.

11 Mass. 468.

2 Pick. 382, 443.

8 Met. 509.

SECTION 7. The officer shall cause the land to be appraised by
three disinterested persons, one of whom shall be appointed by the
creditor, one by the debtor whose land is taken or, if the debtor is
absent from or does not reside in the commonwealth, by his agent
or attorney if he has any known to the officer, and the third by the
officer. If the debtor is absent from or does not reside in the com-
monwealth and has no agent or attorney known to the officer or if
he neglects within a reasonable time to appoint an appraiser, the
officer shall appoint one for him.

2 Cush. 32.
15 Gray, 28.2 Allen, 338.
110 Mass. 529.113 Mass. 347.
114 Mass. 429.122 Mass. 267.
126 Mass. 93.Duties of ap-
praisers.1716-17, 3, § 1.
1719-20, 9, § 1.
1783, 57, § 2.
R. S. 73, §§ 3,
4, 7.

1848, 317.

1851, 257.

G. S. 103, §§ 3,

4, 7.

P. S. 172, §§ 8, 9.

7 Mass. 71.

8 Mass. 284.

14 Mass. 143.

2 Pick. 331, 382,

564.

SECTION 8. The appraisers shall be sworn, before a justice of
the peace or the officer, faithfully and impartially to appraise the
land shown to them as taken on the execution, shall, with the officer,
view the same and shall make such examination of it as may be
necessary to form a just estimate of its value. A certificate of
their appraisal signed by them shall be indorsed on the execution :
but if one of the appraisers who was sworn and acted with the
others refuses to sign the certificate, the certificate of the others
shall be sufficient.

Estate to be
valued as a fee
simple, unless.

R. S. 73, § 8.

G. S. 103, § 8.

P. S. 172, § 10.

14 Mass. 404.

1 Met. 245.

125 Mass. 7.

SECTION 9. The value of the estate of the debtor shall be ap-
praised as an estate in fee simple in possession, unless it is expressly
stated in the description indorsed on the execution to be a less
estate. All the freehold estate and interest which the debtor has
in the land shall be taken and shall pass by the levy, unless it is a
larger estate than is mentioned in said description.

Appraisal of
land subject to
mortgage.

R. S. 73, § 31.

G. S. 103, § 33.

P. S. 172, § 11.

4 Met. 404.

10 Cush. 526.

97 Mass. 339.

SECTION 10. If a right of redeeming mortgaged land is taken
and set off on execution, the appraisers shall deduct the value of the
encumbrance or the amount of the mortgage debt, when known,
from the appraised value of the land, and the amount so deducted
shall be stated in the return of the execution.

125 Mass. 66.

— when sev-
eral parcels are
levied on.

R. S. 73, § 6.

G. S. 103, § 6.

P. S. 172, § 12.

7 Mass. 71.

11 Mass. 515.

2 Pick. 382.

10 Allen, 494.

SECTION 11. If the execution is levied at the same time upon
several parcels of land, each parcel may be separately appraised, or
all may be appraised together. If several parcels are taken succes-
sively on the same execution, all the parcels may be appraised by
the appraisers first appointed, or appraisers may be appointed for
each parcel.

Description of
land in certifi-
cate.

R. S. 73, § 5.

G. S. 103, § 5.

P. S. 172, § 13.

9 Mass. 92.

11 Mass. 515.

4 Met. 404.

SECTION 12. The land levied upon, whether it is an entire parcel
or an undivided part, and whether the debtor's estate therein is a fee
simple or any less estate, and whether it is in possession, reversion
or remainder, shall be described, by metes and bounds or otherwise,
with as much precision as is necessary in a deed of land, and in such

6 manner that the land may be known and identified. Such de-
 7 scription may be contained in the certificate of the appraisers or in
 8 the return of the officer, and the description in either may be re-
 9 ferred to and adopted in the other.

10 Met. 62.
 6 Gray, 552.
 8 Gray, 427.
 125 Mass. 7.

1 SECTION 13. If land is held by a debtor in joint tenancy or as a
 2 tenant in common, the share thereof which belongs to the debtor
 3 may be taken on execution, and shall thereafter be held in common
 4 with the cotenant. If the whole share of the debtor is more than
 5 sufficient to satisfy the execution, the levy shall be made upon such
 6 undivided portion of such share as will, in the opinion of the ap-
 7 praisers, satisfy the execution, and such undivided portion shall be
 8 held in common with the debtor and the other cotenant.

Levy on land
 held jointly or
 in common.
 1783, 57, § 2.
 R. S. 73, § 9.
 G. S. 103, § 9.
 P. S. 172, § 14.
 12 Mass. 348,
 474.
 13 Mass. 57.
 21 Pick. 283.

1 SECTION 14. If the land levied upon cannot be divided without
 2 damage to the whole and is more than sufficient to satisfy the
 3 execution, the levy shall be made upon such undivided portion of
 4 the whole as will, in the opinion of the appraisers, satisfy the exe-
 5 cution, and such undivided portion shall be held in common with
 6 the debtor.

— on land in-
 capable of
 division.
 1818, 115, § 1.
 R. S. 73, § 10.
 G. S. 103, § 10.
 P. S. 172, § 15.
 111 Mass. 83.

1 SECTION 15. An estate for life may be taken and set off to the
 2 creditor like other land at the appraised value or, at the election of
 3 the creditor, the execution may be levied on the rents and profits.

— on life estate.
 R. S. 73, § 11.
 G. S. 103, § 11.
 P. S. 172, § 16.
 10 Mass. 260.

15 Mass. 439.

1 SECTION 16. If the execution is levied on rents and profits, the
 2 annual value thereof shall be determined by the appraisers, and the
 3 land shall be set off to the creditor for such time as will satisfy
 4 the execution at the rate of rents and profits as determined by the
 5 appraisers, if the life estate endures so long, computing interest on
 6 the amount due on the execution and deducting the rents and profits
 7 as they accrue as so much paid from time to time. If the life estate
 8 expires before the end of the term so fixed by the appraisers, the
 9 creditor may have a new action on the judgment to recover the
 10 amount then due thereon.

— on rents and
 profits.
 R. S. 73, § 12.
 G. S. 103, § 12.
 P. S. 172, § 17.

1 SECTION 17. If the land levied upon is under lease to a third
 2 person, and the reversion of the whole is taken on the execution,
 3 the lessee shall pay to the creditor the rent which accrues after the
 4 levy, except such part thereof as he has paid before notice of the
 5 levy.

— on leased
 land.
 R. S. 73, § 13.
 G. S. 103, § 13.
 P. S. 172, § 18.

1 SECTION 18. If the land is under lease as aforesaid and the
 2 reversion of a part only is taken, the appraisers shall determine
 3 what portion of the whole annual rent shall be paid to the creditor,
 4 and the lessee shall pay the same to him.

Same subject.
 R. S. 73, § 14.
 G. S. 103, § 14.
 P. S. 172, § 19.
 17 Mass. 439.

1 SECTION 19. The officer who serves an execution shall deliver
 2 to the creditor or to his attorney seisin and possession of the land
 3 taken thereon, so far as the nature of the estate and the title of the
 4 debtor will admit; but if the estate taken is a remainder, reversion
 5 or right of redemption, the officer shall not oust the person who
 6 is lawfully in possession of the land, but shall assign to the creditor

Officer to de-
 liver seisin to
 creditor.
 1716-17, 3, § 1.
 1719-20, 9, § 1.
 1783, 57, § 4.
 R. S. 73, § 15.
 G. S. 103, § 15.
 P. S. 172, § 20.
 2 Pick. 382.

the right which the debtor had therein, and shall make his return 7
in accordance therewith. 8

Momentary
seisin, when.
R. S. 73, § 16.
G. S. 103, § 16.
P. S. 172, § 21.
3 Mass. 523.
128 Mass. 427.

SECTION 20. If an execution is levied on land of which a person 1
other than the debtor is actually seised, the officer shall deliver to 2
the creditor or to his attorney such momentary seisin and possession 3
of the land as will enable the creditor to maintain an action therefor 4
upon his own seisin ; but the officer shall not oust the tenant then 5
in possession. 6

Return and
record of
execution.
1636, 10, § 2.
1716-17, 3, § 1.
1719-20, 9, § 1.
1735-6, 9, § 2.
1783, 57, § 2.
R. S. 73, § 17.
G. S. 103, § 17.
P. S. 172, § 22.
1895, 437.

SECTION 21. The officer shall return the execution, with a cer- 1
tificate of his doings indorsed thereon, to the court or trial justice 2
to which or to whom it is returnable, and such execution and cer- 3
tificate shall be forthwith recorded. The officer shall also, within 4
three months after the levy has been completed, cause the execution 5
and return to be recorded in the registry of deeds for the county or 6
district in which the land lies. 15 Mass. 137. 135 Mass. 65. 148 Mass. 501. 7

Effect of
record.
1853, 239, § 2.
G. S. 103, § 18.
P. S. 172, § 23.

SECTION 22. Such record in the registry of deeds of an execu- 1
tion issued by a police, district or municipal court or by a trial 2
justice, and of the levy thereon, shall be prima facie evidence of 3
the regularity of the judgment and prior proceedings in the case in 4
which the execution was issued. 5

Officer's re-
turn.
R. S. 73, § 23.
1852, 256.
G. S. 103, § 25.
P. S. 172, § 24.
11 Mass. 515.
13 Mass. 361.
14 Mass. 20, 143.
2 Pick. 330.
9 Met. 413, 476.
10 Met. 62.
2 Cush. 417.
8 Gray, 427.
15 Gray, 28.
16 Gray, 334.
4 Allen, 406.
12 Allen, 543.
97 Mass. 310.
101 Mass. 418.
103 Mass. 151.
111 Mass. 83, 84.
118 Mass. 517.
124 Mass. 172.
125 Mass. 7.
126 Mass. 93.

SECTION 23. The return of the officer on the execution shall, in 1
addition to the other requirements of law, set forth substantially : 2
First, The time when the land was taken on execution. 3

Second, Either that the appraisers were appointed by the of- 4
ficer, the creditor and the debtor, or that the debtor was absent 5
from, or not resident in, the commonwealth and had no agent or 6
attorney known to the officer, or neglected to appoint an appraiser, 7
and the officer appointed one for him. 8

Third, That the appraisers were duly sworn, unless a certificate 9
of the oath is indorsed on the execution and signed by the justice, 10
special commissioner or officer who administered it. 11

Fourth, That they appraised and set off the land at the value 12
stated. 13

Fifth, That the officer either delivered seisin thereof to the 14
creditor or to a person as his attorney, or assigned the same to him 15
as provided in the case of a remainder or incorporeal estate. 16

Sixth, The description of the land unless it is sufficiently de- 17
scribed in the certificate of the appraisers and the return refers to 18
and adopts that description ; and 19

Seventh, If the appraisal is signed by only two of the appraisers, 20
that all three of them were present and acted in the appraisal. 21

Levy void,
when.
R. S. 73, § 18.
G. S. 103, § 19.
P. S. 172, § 25.

SECTION 24. If the execution and return are not recorded in 1
the registry of deeds within three months as aforesaid, the levy 2
shall be void as against a creditor who has attached the same land 3
or taken it on execution without notice of such levy, and also as 4
against a purchaser in good faith for value and without such notice ; 5
but if such execution and return are recorded after the expiration 6
of the three months, the levy shall be valid and effectual as against 7
a conveyance, attachment or levy made after such recording. 8

- 1 SECTION 25. If the execution and return have not been returned
 2 or recorded as aforesaid, the levy shall be so far valid against the
 3 creditor that he shall not waive the levy and have a new execution,
 4 except as provided in section fifty.

Levy valid
 against the
 creditor.
 R. S. 73, § 19.
 G. S. 103, § 20.
 P. S. 172, § 26.

LEVY BY SALE.

- 1 SECTION 26. Land and rights mentioned in section one and
 2 rights of redeeming land sold for the payment of taxes and other
 3 assessments may, if the creditor so elects, be sold on the execution
 4 as hereinafter provided, and, after satisfying the execution with the
 5 costs and charges, the surplus proceeds of the sale shall be applied
 6 and disposed of as provided upon a sale of personal property on
 7 execution under the provisions of the preceding chapter. Land or
 8 rights taken on an execution in favor of the commonwealth shall in
 9 all cases be so sold.

129 Mass. 210.

133 Mass. 374.

140 Mass. 373.

Levy by sale.
 1783, 58, § 3.
 1798, 77, § 3.
 1804, 83, § 6.
 R. S. 73, §§ 37,
 55; 97, § 32.
 G. S. 103, §§ 39,
 58.
 1874, 188, §§ 1, 2.
 1881, 39.
 P. S. 172, § 27.
 99 Mass. 446.
 101 Mass. 409.
 128 Mass. 369.

- 1 SECTION 27. The officer authorized to serve the execution shall
 2 make the sale by public auction to the highest bidder, and shall
 3 convey by deed to the purchaser all the debtor's title to the land or
 4 rights so sold. Such deed shall, if the execution with the return
 5 thereon has been returned, be valid as against the debtor or any
 6 person claiming under him who has actual notice thereof and, if
 7 recorded within three months after such sale in the registry of
 8 deeds for the county or district in which the land lies, shall be
 9 valid as against any other person.

Sale, how
 made.
 1798, 77, §§ 3, 5.
 R. S. 73, § 38.
 G. S. 103, § 40.
 P. S. 172, § 28.
 10 Met. 138.
 4 Gray, 468.
 3 Allen, 357.
 110 Mass. 273.
 128 Mass. 427.
 135 Mass. 65.
 148 Mass. 501.

- 1 SECTION 28. The officer shall, thirty days at least before the
 2 sale, deliver to the debtor, if found within his precinct, a written
 3 notice of the sale and shall post a notice of the sale in a public
 4 place in the city or town in which the land lies and also in two
 5 adjoining cities or towns, if there are so many in the county. The
 6 officer shall also cause a notice of the time and place of sale to be
 7 published three weeks successively before the sale in a newspaper,
 8 if any, published in the county in which the land lies.

—notice of.
 1798, 77, § 4.
 R. S. 73, § 39.
 G. S. 103, § 41.
 P. S. 172, § 29.
 12 Mass. 513.
 1 Pick. 351.
 8 Cush. 35.
 155 Mass. 451.
 164 Mass. 209.

- 1 SECTION 29. If, at the time appointed for the sale, the officer
 2 considers it for the interest of all persons concerned to postpone the
 3 sale, he may adjourn it for not more than seven days, and so from
 4 time to time until the sale is completed; giving notice of every such
 5 adjournment by a public declaration thereof at the time and place
 6 previously appointed for the sale.

—adjournment
 of.
 1798, 77, § 4.
 R. S. 73, § 40.
 G. S. 103, § 42.
 P. S. 172, § 30.
 4 Pick. 354.
 101 Mass. 409.

- 1 SECTION 30. The provisions of section forty of chapter one
 2 hundred and seventy-seven relative to adjournment by order of court
 3 shall apply to such sales.

—adjournment
 of, by court.
 1884, 175.

SUSPENSION OF LEVY.

- 1 SECTION 31. If land has been seized on execution and the further
 2 service of the execution is suspended by reason of a prior attach-
 3 ment or seizure of the same land, the officer making the later seizure
 4 shall cause a record thereof to be made in the same manner as an
 5 attachment of land on mesne process is recorded. Such record shall

Suspension of
 levy.
 R. S. 97, § 34.
 G. S. 133, § 50.
 P. S. 171, § 52.
 1887, 407, § 1.
 3 Met. 249, 251.
 5 Met. 90.
 97 Mass. 339.

be sufficient notice of said seizure, and the levy on such land shall be considered as having been made at the time of such seizure if such record is made within three days thereafter; otherwise, at the time when said record is made. The land shall remain bound by such seizure until it is set off or sold in whole or in part, under the prior attachment or seizure or until that attachment or seizure is dissolved.

Proceedings
after dissolution
of prior
attachment.
R. S. 97, § 35.
G. S. 133, § 51.
P. S. 171, § 53.
1887, 407, § 2.
111 Mass. 84.

SECTION 32. If the land is set off or sold in part under the prior attachment or seizure, or if that attachment or seizure is dissolved, the land or such part thereof as remains undisposed of shall continue bound for thirty days thereafter by the seizure on execution and the service of the execution may be completed as if the land had been first seized thereon within said thirty days although the return day of the execution has passed.

RIGHT OF REDEMPTION.

Right of redemption.
1712-13, 8, § 1.
1735-6, 9, § 3.
1783, 57, § 3; 58, § 6.
1798, 77, § 5.
1815, 137, § 1.
R. S. 73, §§ 24, 33, 42, 56.
G. S. 103, §§ 26, 35, 44, 59.
1874, 188, § 3.
1876, 235.
P. S. 172, §§ 31, 32.
1 Pick. 485.
2 Met. 510.
2 Cush. 141.
13 Allen, 262.
166 Mass. 407.

SECTION 33. If land or rights have been taken and set off on execution the debtor may within one year after the levy or, if such land or rights have been sold on execution, within one year after such sale or within the time and upon the terms provided in section forty-seven, redeem the same by paying or tendering to the creditor or purchaser, as the case may be, the amount for which they were so set off or sold with interest thereon from the time of the levy, all amounts paid for lawful taxes and assessments, reasonable expenses incurred for repairs and improvements and, in case of levy by set-off, all amounts lawfully paid on account of any mortgage or other lien recoverable under the provisions of section forty-eight, and deducting from such amount in each case the rents and profits received or which might have been received by the creditor or purchaser and with which he is lawfully chargeable. The creditor or purchaser shall thereupon deliver to the debtor a deed of release, prepared by the debtor or at his expense, of the land or rights so taken and set off or sold.

Ascertainment
of amount due.
1783, 57, § 3.
R. S. 73, § 25.
G. S. 103, § 27.
P. S. 172, § 33.

SECTION 34. The debtor may in all cases cause the amount due for redemption to be ascertained at his own expense by three justices of the peace in the manner following: one of the justices shall be chosen by the debtor, one by the creditor, and the third by the two first chosen; or if the creditor neglects to choose one, the justice chosen by the debtor shall appoint the other two. After a hearing before the three justices, they or two of them shall make and sign a certificate of the amount which they adjudge to be due for the redemption of the land, which certificate shall be final and conclusive between the parties. A tender by the debtor of the amount so adjudged to be due shall be a sufficient tender notwithstanding any previous tender.

Redemption of
mortgage paid
by creditor or
purchaser.
1815, 137, § 1.
R. S. 73, §§ 34-36, 43.
G. S. 103, §§ 36-38, 45.

SECTION 35. If the creditor or, in case of a sale, the purchaser pays the debt due on a mortgage to which the land levied on is subject, the judgment debtor may redeem the mortgage from the creditor or purchaser at the time when, and upon the terms upon which, he might have redeemed it from the mortgagee if no execu-

tion had been levied. If the debtor does not so redeem the mortgage, the creditor or purchaser shall hold the land as an assignee of the mortgage and free from any right of redemption, notwithstanding the debtor has redeemed or offered to redeem the right taken on the execution. If the debtor does not within one year after the levy redeem the right taken on the execution, the creditor or purchaser shall hold the land against the debtor, notwithstanding the debtor has redeemed or offered to redeem the mortgage.

P. S. 172, §§ 34-36.
22 Pick. 390.

SECTION 36. Rights of redeeming land sold for the payment of taxes or other assessments may, if sold on execution, be redeemed in the same manner as rights of redeeming mortgaged land which is so sold.

Redemption of right to redeem from tax sale. 1881, 39.
P. S. 172, § 37.

SECTION 37. If an execution is levied on the rents and profits of an estate for life, the debtor may, at any time before the debt with interest thereon is fully satisfied, redeem the same by paying or tendering to the creditor the amount then due to him; and the proceedings relative to such redemption shall be the same as are provided for the redemption of other land.

— of life estate if levy is on rents and profits.
1783, 57, § 3.
R. S. 73, § 30.
G. S. 103, § 32.
P. S. 172, § 38.

SECTION 38. If the debtor tenders the amount justly due for redemption, and the creditor or, in case of a sale, the purchaser does not within seven days after the tender release the land as before provided, the debtor may recover it, with costs, in a writ of entry on his own seisin against the creditor or purchaser as a disseisor; but before judgment therein is entered for him, he shall bring into court for the use of the creditor or purchaser the amount so tendered.

Remedy if creditor does not release.
1783, 57, § 3.
R. S. 73, §§ 26, 44.
G. S. 103, §§ 28, 46.
P. S. 172, § 39.

SECTION 39. The debtor may, within the year before limited for redemption and irrespective of any tender, bring in the supreme judicial court or the superior court in the county in which the land lies, instead of a writ of entry, a suit in equity for redemption, under the provisions of the two following sections.

Suit to redeem.
R. S. 73, §§ 27, 44.
G. S. 103, §§ 29, 46.
P. S. 172, § 40.
2 Cush. 141.

SECTION 40. The debtor shall in his bill offer to pay such amount as shall be found due for redemption and may set forth any tender he has made. The court shall determine the amount due, unless it has been already ascertained by three justices of the peace as provided in section thirty-four, and shall require the debtor, within such time as it may order, to deposit with the clerk for the use of the creditor or purchaser the amount due for redemption. Upon the debtor's complying with the order, he shall be entitled to judgment and execution for seisin of the land as at common law.

Proceedings.
R. S. 73, §§ 28, 44.
G. S. 103, §§ 30, 46.
P. S. 172, § 41.
130 Mass. 201.

SECTION 41. The court may in such suit award costs to either party. But the creditor or purchaser shall not be required to pay costs, unless it appears that he has unreasonably neglected to render, when requested, a just and true account of the amount due on the judgment, of the money expended in repairing and improving the land and of the rents and profits thereof; or unless it appears that a sufficient amount was tendered to him for the redemption of the land, and that he neglected for seven days thereafter to execute and

Costs.
R. S. 73, §§ 29, 44.
G. S. 103, §§ 51, 46.
P. S. 172, § 42.
130 Mass. 201.

deliver a release thereof as before required. If the creditor or purchaser has, before the commencement of the suit, tendered such a deed of release and alleges such tender and brings the deed into court to be delivered to the debtor, he shall recover costs.

Rights of debtor, creditor or purchaser may be exercised by his heirs, etc.
R. S. 73, §§ 46, 47.
G. S. 103, §§ 50, 51.
P. S. 172, §§ 43, 44.

SECTION 42. Everything required in this chapter to be done by or to a debtor or by or to a creditor or purchaser relative to the redemption of an estate taken and set off or sold on execution may be done by or to his heirs, assigns, executor, administrator or by or to any person lawfully claiming under him or them, in like manner and with like effect as if done by or to him; except that if an executor or administrator recovers the land, the recovery shall operate only as a discharge of the lien or encumbrance on the land, and the heir or other person entitled thereto shall be seised thereof under his title.

GENERAL PROVISIONS.

When levy made.
R. S. 73, §§ 22, 41.
G. S. 103, §§ 24, 43.
P. S. 172, § 45.
1896, 464.
11 Mass. 153.
3 Met. 245.

SECTION 43. A levy by set-off or sale shall be considered as made at the time when the land is taken, and the subsequent proceedings and the officer's return thereof shall be valid, although made after the return day or after the removal or other disability of the officer.

9 Met. 23. 2 Allen, 562. 9 Allen, 147.
13 Allen, 262. 132 Mass. 332. 155 Mass. 451.

Notice, how served.
1881, 207.
P. S. 172, § 46.
130 Mass. 25.
143 Mass. 195.

SECTION 44. Notice to the debtor under the provisions of this chapter may be served upon him personally or left at his last and usual place of abode. If the debtor does not reside within the precinct of the officer who serves the execution, and is not found by him therein, such officer shall, in addition to such other service as is required by law, send by mail, postpaid and addressed to the debtor at his residence as described in the execution, a copy of any notice service of which upon him would be required if he were found within such precinct.

Fees and charges added to debt.
R. S. 73, § 45.
G. S. 103, § 49.
P. S. 172, § 47.
2 Allen, 562.
9 Allen, 147.

SECTION 45. The fees and charges of levying an execution shall be added to and shall be considered as part of the amount due on the execution, in the setting-off or sale of land on execution, in the redemption thereof and in everything relative to the proceedings under the execution.

Levy on right of redemption of land in different counties.

SECTION 46. A levy upon a right of redemption of land in different counties may be made by an officer of any of such counties.

G. S. 103, § 47. P. S. 172, § 48.

Action for possession to be brought, when.
1844, 107, § 4.
1855, 453.
G. S. 103, § 48.
1874, 188, §§ 4, 5.
1876, 235.
P. S. 172, § 49.
1886, 86.
3 Allen, 508.
6 Allen, 401.
10 Allen, 144.
12 Allen, 591.
13 Allen, 257.
110 Mass. 273.
132 Mass. 53.

SECTION 47. If an execution is levied on land or rights the record title to which fraudulently stands in the name of a person other than the debtor and such other person is in possession claiming title thereto, the levy shall be void unless the judgment creditor to whom the land is set off or the purchaser at the sale or a person lawfully claiming under either of them commences his action to recover possession thereof within one year after the return day of the execution; and such land or rights so set off or sold may be redeemed by the defendant in said action or by any person lawfully claiming under him, within three months from the date of the judg-

11 ment recovered in said action for possession, in the manner and ac- 139 Mass. 157.
 12 cording to the terms and conditions provided in section thirty-three, 141 Mass. 494.
 13 upon payment of the costs of such action for possession. 149 Mass. 152.

1 SECTION 48. If, after an execution has been levied by setting Levy on land
 2 off land, there proves to be a mortgage or other lien on the land subject to lien
 3 or an estate of homestead therein, not known or allowed for, or not not allowed
 4 fully allowed for, by the appraisers, the creditor shall nevertheless for.
 5 be entitled to hold the land by force of the execution, except the R. S. 73, § 32.
 6 estate of homestead, as against the debtor, and may recover, in a G. S. 103, § 34.
 7 new action against the debtor, the amount of the homestead estate P. S. 172, § 50.
 8 or the amount which he may lawfully pay on account of such mort-
 9 gage or other lien, or so much thereof as has not been deducted
 10 and allowed for in the estimate of the appraisers.

1 SECTION 49. The right of redeeming land taken on execution — on right of
 2 may be taken and sold on another execution, in like manner as the redeeming
 3 right of redeeming mortgaged land may be taken and sold; and land taken on
 4 the debtor and those claiming under him may redeem the right sold execution.
 5 under such second execution in like manner as if the right so sold R. S. 73, § 48.
 6 had been a right of redeeming mortgaged land. All proceedings G. S. 103, § 52.
 7 in levying such second execution, the redemption of the right sold 1877, 176.
 8 under it and all the rights and obligations of the several parties P. S. 172, § 51.
 9 relative to such levy and redemption shall be substantially the 124 Mass. 330.
 10 same as if the right taken and sold on such second execution had 130 Mass. 205.
 11 been a right of redeeming mortgaged land.

1 SECTION 50. If, before an execution which has been levied on — waiver of.
 2 land is returned and recorded, it appears that there is a defect or R. S. 73, § 20.
 3 error in the proceedings which would defeat the levy, or that the G. S. 103, § 21.
 4 land levied upon cannot be held thereby, the creditor may waive P. S. 172, § 52.
 5 the levy, which shall thereupon be void, and may resort to any 2 Gray, 326.
 6 other remedy for the satisfaction of his judgment.

1 SECTION 51. If, after the return of such execution, it appears Scire facias on
 2 to the creditor that the land levied on, or any part thereof, cannot invalid levy.
 3 be held thereby, he may take out from the court from which the 1785, 6.
 4 execution issued a writ of scire facias requiring the debtor to appear R. S. 73, § 21.
 5 and show cause why another execution should not be issued on the G. S. 103, § 22.
 6 same judgment, and the writ may issue although there is a subse- 1863, 125, § 1.
 7 quent judgment for a part thereof not satisfied by the levy. If the P. S. 172, § 53.
 8 debtor, after being duly summoned, does not show sufficient cause 19 Pick. 433.
 9 to the contrary, the levy of the former execution may be set aside 12 Met. 449.
 10 and another execution issued for the amount then due on the original 2 Gray, 326.
 11 judgment and not included in a subsequent judgment, but without 10 Gray, 29.
 12 interest or further costs. 143 Mass. 365.
 150 Mass. 239.
 155 Mass. 320.

1 SECTION 52. If at the hearing the court finds that a part only Procedure.
 2 of the land levied on is held thereby, a warrant may, if the creditor G. S. 103, § 23.
 3 so requires, be issued to an officer qualified to serve the execution, P. S. 172, § 54.
 4 requiring him to cause the part held thereby to be appraised at its
 5 value when taken. The officer shall thereupon cause such appraisal
 6 to be made in the manner required upon the original levy, and,
 7 upon return of said warrant, the levy may be set aside so far as it

relates to the part not held thereby, and, if duly recorded, shall be valid as to the remaining part. A new execution may thereupon be issued for the difference between the amount of the original appraisal of the land levied on and the amount of the appraisal of the part held by the levy, without interest or costs. If the court finds that the creditor in proceedings under this or the preceding section had no just cause for such action, the debtor shall recover costs.

Levy on land of deceased.
1758-9, 37, § 1.
1783, 32, § 7.
R. S. 73, § 49.
G. S. 103, § 53.
P. S. 172, § 55.
3 Mass. 523.
136 Mass. 249.

SECTION 53. Land of a deceased person may be taken on execution on a judgment against his executor or administrator for the debt of the deceased, for the costs of the action against him if the executor or administrator has not appeared therein, and for the fees and charges of the levy, and such land shall be appraised and set off or sold, in like manner as if execution had been levied against the deceased in his lifetime.

Redemption and exemption.
1783, 32, § 7.
R. S. 73, §§ 50, 51.
G. S. 103, §§ 54, 55.
P. S. 172, §§ 56, 57.
3 Mass. 523.

SECTION 54. Land taken as provided in the preceding section may be redeemed by the executor, administrator, heir or devisee of the deceased, or by any person lawfully claiming under him or them, in like manner as if the land had been taken on an execution against the deceased in his lifetime, and thereafter shall not be again taken on execution for any other debt of the deceased, nor be in any way liable therefor.

Dower in land taken on execution.
C. L. 42, § 1.
1716-17, 3, § 2.
1783, 57, § 4.
R. S. 73, § 53.
G. S. 103, § 57.
P. S. 172, § 59.

SECTION 55. A surviving husband shall be entitled to curtesy and a widow to dower in land taken on execution from his wife or her husband, respectively, or on execution upon a judgment against her or his executor or administrator, respectively, in like manner as if the land had been conveyed by the wife or husband in her or his lifetime without release of curtesy by him or dower by her.

TITLE III.

OF REMEDIES RELATING TO REAL PROPERTY.

- CHAPTER 179. — Of the Writ of Entry.
CHAPTER 180. — Of the Writ of Dower.
CHAPTER 181. — Of the Summary Process for the Possession of Land.
CHAPTER 182. — Of Proceedings for the Settlement of Title to Land.
CHAPTER 183. — Of the Determination of Boundaries of Flats.
CHAPTER 184. — Of the Partition of Land.
CHAPTER 185. — Of Waste and Trespass.
CHAPTER 186. — Of Actions for Private Nuisances.
CHAPTER 187. — Of the Foreclosure and Redemption of Mortgages.
CHAPTER 188. — Of Informations by the Commonwealth.

CHAPTER 179.

OF THE WRIT OF ENTRY.

- SECTIONS 1-7. — Requisites.
SECTIONS 8-10. — Pleadings and Evidence.
SECTION 11. — Death of Party.
SECTIONS 12-16. — Damages for Demandant.
SECTIONS 17-22. — Allowance to Tenant.
SECTIONS 23-27. — Set-Off.
SECTIONS 28-34. — Election by Demandant.
SECTIONS 35, 36. — Death of Party after Judgment.
SECTIONS 37-40. — Life Tenant and Remainderman.
SECTION 41. — Execution to be Recorded.
SECTIONS 42, 43. — Application of Chapter.

REQUISITES.

- 1 SECTION 1. All estates of freehold in fee simple, fee tail or for Estates re-
2 life may be recovered by a writ of entry upon disseisin, unless a coverable.
3 different action is provided by law. R. S. 101, § 1.

G. S. 134, § 1.

P. S. 173, § 1.

13 Allen, 286.

124 Mass. 468.

- 1 SECTION 2. The demandant shall declare on his own seisin Form of
2 within twenty years then last past, without specifying any particu- declaration.
3 lar day, and shall allege a disseisin by the tenant, but need not 1786, 13.
4 aver a taking of the profits. He shall set forth the estate which he 1807, 75, §§ 1, 2.
1828, 137, § 2.
R. S. 101, §§ 2, 3.
G. S. 134, § 2.

P. S. 173, § 2.
3 Mass. 352.
6 Cush. 265.
9 Allen, 370.
97 Mass. 34.
101 Mass. 188.
116 Mass. 117.

claims in the land, whether in fee simple, fee tail or for life, and if the latter, whether for his own life or for the life of another, but he shall not be required to set forth the original gift, devise or other conveyance or title by which he claims the estate.

128 Mass. 458.

143 Mass. 93.

161 Mass. 91.

Proof of actual entry not required.

R. S. 101, § 4.
G. S. 134, § 3.
P. S. 173, § 3.
21 Pick. 215.
8 Allen, 597.
13 Allen, 346.
113 Mass. 318.

SECTION 3. The demandant shall not be required to prove an actual entry under his title, but proof that he is entitled to such an estate as he claims in the land and that he has a right of entry therein shall be sufficient to prove his seisin. No writ of entry shall be maintained unless the demandant has at the time of commencing his action a right of entry into the land demanded.

130 Mass. 384.

161 Mass. 91.

Action, how prosecuted.

R. S. 101, § 8.
G. S. 134, § 7.
P. S. 173, § 4.
13 Mass. 472.
9 Cush. 427.
102 Mass. 374, 512.
139 Mass. 244.
161 Mass. 91.

SECTION 4. A writ of entry shall be prosecuted in the same manner as if the demandant, at the time of commencing the action, had made an actual entry on the land demanded and had been immediately ousted by the tenant. In a trial upon the general issue, if the demandant proves that he is entitled to the estate set forth in the declaration and that he had a right of entry on the day when the action was commenced, he shall recover the land unless the tenant proves a better title in himself.

Who may be considered a disseisor.

R. S. 101, § 6.
G. S. 134, § 5.
P. S. 173, § 5.
99 Mass. 7.

SECTION 5. A person who is in possession of the land demanded in a writ of entry, claiming an estate of freehold therein, may be considered as a disseisor for the purpose of trying the right, irrespective of the manner of his original entry therein.

Same subject.

R. S. 101, § 7.
G. S. 134, § 6.
P. S. 173, § 6.
20 Pick. 458.
12 Met. 154.
12 Cush. 185.
1 Gray, 416.
2 Gray, 135.

SECTION 6. If the person in possession has actually ousted the demandant or withheld from him the possession of the land, he may, at the election of the demandant, be considered as a disseisor for the purpose of trying the right, although he claims an estate less than a freehold.

4 Allen, 150.

110 Mass. 419.

124 Mass. 307.

126 Mass. 327.

154 Mass. 535.

161 Mass. 91.

Separate or joint actions.

1783, 62, § 3.
1785, 62, § 3.
1828, 137, § 3.
R. S. 101, § 10.

SECTION 7. Joint tenants or tenants in common may join in a writ of entry for the recovery of land, or any one of them may sue alone for his share.

6 Gray, 428.

97 Mass. 508.

G. S. 134, § 9.
135 Mass. 231.

P. S. 173, § 7.

155 Mass. 461.

PLEADINGS AND EVIDENCE.

Pleadings and evidence.

R. S. 101, § 9.
G. S. 134, § 8.
P. S. 173, § 8.
99 Mass. 7.
112 Mass. 536.
123 Mass. 187.

SECTION 8. The law and practice relative to the pleadings and evidence in a writ of entry upon disseisin, as heretofore recognized and established, shall continue in force, except so far as they are altered by the provisions of this chapter and of chapter one hundred and seventy-three.

Same subject.

1828, 137, § 4.
R. S. 101, § 13.
1836, 273, § 1.
G. S. 134, § 12.
P. S. 173, § 9.
2 Met. 293.

SECTION 9. Non-tenure, disclaimer, several tenancy and sole tenancy may be pleaded in abatement or given in evidence under the general issue, but the party shall be allowed such costs only as accrue after the filing of the plea.

12 Met. 154.

4 Gray, 53.

6 Gray, 107.
6 Allen, 28.

98 Mass. 500.
108 Mass. 232.

123 Mass. 187.
124 Mass. 307.

139 Mass. 244.
143 Mass. 393.

- 1 SECTION 10. The demandant may recover any specific part or
 2 undivided portion of the land to which he proves a sufficient title,
 3 although it is less than is demanded in the writ.

Part may be
 recovered.
 R. S. 101, § 11.
 G. S. 134, § 10.

P. S. 173, § 10.

2 Pick. 387.

99 Mass. 7.

111 Mass. 386.

DEATH OF PARTY.

- 1 SECTION 11. Upon the death of either demandant or tenant, the
 2 action may proceed by or against the survivors and the heirs or
 3 devisees of the deceased party in the manner provided in chapter
 4 one hundred and seventy-one.

Death of party.
 R. S. 101, § 12.
 G. S. 134, § 11.
 P. S. 173, § 11.
 152 Mass. 257.

155 Mass. 461.

DAMAGES FOR DEMANDANT.

- 1 SECTION 12. If the demandant recovers judgment, he shall re-
 2 cover in the same action, subject to the limitations hereinafter
 3 provided, damages for the rents and profits of the land from the
 4 time when his title accrued and for any destruction or waste of
 5 the buildings or other property for which the tenant is liable.

Demandant
 may recover
 certain dam-
 ages.
 R. S. 101, § 14.
 G. S. 134, § 13.
 P. S. 173, § 12.
 2 Met. 253.
 6 Cush. 265.

4 Gray, 53.
 105 Mass. 328.

111 Mass. 388.
 114 Mass. 140.

124 Mass. 307.
 128 Mass. 458.

150 Mass. 535.

- 1 SECTION 13. If an issue of fact is found for the demandant, the
 2 jury shall at the same time assess his damages, except as provided
 3 in section twenty-one.

P. S. 173, § 13.

8 Gray, 435.

Assessment of
 damages by
 jury.
 R. S. 101, § 15.
 G. S. 134, § 14.

- 1 SECTION 14. The rents and profits for which the tenant is liable
 2 shall be the clear annual value of the land for the time during which
 3 he was in possession thereof, after deducting all lawful taxes and
 4 assessments on the land which have been paid by him and all the
 5 necessary and ordinary expenses of cultivating the land or of other-
 6 wise collecting the rents, profits or income thereof.

Measure of
 such damages.
 R. S. 101, § 16.
 G. S. 134, § 15.
 P. S. 173, § 14.
 103 Mass. 146.
 114 Mass. 140.

- 1 SECTION 15. In determining the rents and profits, the value of
 2 the use by the tenant of any improvements made by him or by those
 3 under whom he claims shall not be included.

Same subject.
 R. S. 101, § 17.
 G. S. 134, § 16.
 P. S. 173, § 15.

- 1 SECTION 16. The tenant shall not be liable for the rents and
 2 profits for any time more than six years prior to the date of the
 3 writ nor for any waste or other damage committed before said six
 4 years, unless the rents and profits are allowed by way of set-off
 5 to his claim for improvements as provided in section twenty-four.

Same subject.
 R. S. 101, § 18.
 G. S. 134, § 17.
 P. S. 173, § 16.
 9 Cush. 427.
 104 Mass. 1.

ALLOWANCE TO TENANT.

- 1 SECTION 17. If the land demanded has been actually held and
 2 possessed by the tenant and by those under whom he claims for
 3 six years next before the date of the writ, he shall, if judgment
 4 is against him, be entitled to compensation in the manner herein-
 5 after provided for the value of any buildings or improvements made
 6 or erected on the land by him or by any person under whom
 7 he claims.

Allowance to
 tenant for im-
 provements.
 1807, 75, § 3.
 R. S. 101, § 19.
 G. S. 134, § 18.
 P. S. 173, § 17.
 6 Mass. 303.
 13 Mass. 241.
 15 Mass. 291.

5 Pick. 140.
 15 Pick. 141.

12 Cush. 458.
 15 Gray, 36.

17 Mass. 350.
 100 Mass. 177.

111 Mass. 386.
 117 Mass. 360.

Allowance to
tenant for im-
provements.
R. S. 101, § 20.
G. S. 134, § 19.
P. S. 173, § 18.
7 Met. 310.

SECTION 18. The tenant shall also be entitled to the like com- 1
pensation although the land has not been so held for six years, if 2
he holds it under a title which he had reason to believe to be good. 3

10 Cush. 451.
12 Cush. 458.
10 Gray, 40.

5 Allen, 319.
8 Allen, 363.
100 Mass. 177, 270.

109 Mass. 206.
117 Mass. 369, 393.
128 Mass. 167.

—proceedings
for.
1807, 75, § 3.
R. S. 101, § 21.
G. S. 134, § 20.
P. S. 173, § 19.
7 Met. 310.

SECTION 19. If the tenant claims allowance for improvements, 1
he shall enter on the record a suggestion of his claim, with a 2
request that, if judgment is rendered for the demandant, the value 3
of the improvements may be ascertained and allowed to him. 4

11 Gray, 217.

Same subject.
R. S. 101, § 22.
G. S. 134, § 21.
P. S. 173, § 20.

SECTION 20. The suggestion shall be entered at the same sit- 1
ting with the plea unless the court allows it to be entered after- 2
ward; but if judgment is rendered for the demandant without a 3
plea, the court may allow it to be entered at any time. 4

Allowance,
how and when
determined.
R. S. 101, §§ 23-
26.
G. S. 134, §§ 22-
24.
P. S. 173, §§ 21-
23.
6 Cush. 265.
8 Gray, 435.

SECTION 21. If an issue of fact is tried and found for the 1
demandant, the jury shall at the same time determine the amount 2
to be allowed to the tenant for improvements, unless the court, on 3
the motion of either party, at any time before the verdict on the 4
title is recorded, postpones the assessment of the amounts due to 5
the demandant for the rents and profits or other damages, or to the 6
tenant for improvements, until after the trial of the title and a ver- 7
dict thereon. If such assessment is so postponed, or if no issue of 8
fact is tried and judgment is to be rendered for the demandant, the 9
assessment shall be made by the court, unless, on its own motion 10
or that of either party, the court orders an assessment by a jury. 11
In all cases, if the parties consent, the assessment may be made by 12
assessors appointed by the court. 13

—limitation of.
R. S. 101, § 27.
G. S. 134, § 25.
P. S. 173, § 24.

SECTION 22. The amount allowed for improvements shall not 1
exceed the amount actually expended by the tenant and those 2
under whom he claims, nor shall it exceed the amount to which the 3
value of the land is actually increased thereby at the time of the 4
assessment. 5

SET-OFF.

Set-off of im-
provements
against dam-
ages.
R. S. 101, § 28.
G. S. 134, § 26.
P. S. 173, § 25.

SECTION 23. If an allowance is made to the tenant for improve- 1
ments, it shall be set off against the amount found due from him 2
for rents and profits and other damages; and the demandant shall 3
have judgment and execution for the balance, if any, due from the 4
tenant as well as for seisin of the land. 5

Same subject.
R. S. 101, § 30.
G. S. 134, § 28.
P. S. 173, § 26.

SECTION 24. If the amount found due to the tenant for improve- 1
ments exceeds the amount due from him for the rents and profits 2
which have accrued within the six years, he shall be chargeable 3
with the rents and profits which accrued before that time, so far 4
as may be necessary to balance his claim for improvements; but 5
in such case he shall not be liable to repay the rents and profits in 6
excess of the value of the improvements. 7

Excess of im-
provements
over damages.

SECTION 25. The demandant shall, except as provided in the 1
following section, before taking out his execution for seisin of the 2

3 land, pay to the tenant, or to the clerk of the court for his use,
4 the balance, if any, due the tenant for improvements after deduct-
5 ing the amount due from the tenant for the rents and profits and
6 other damages; but the tenant or person who claims under him
7 shall not be liable for rents and profits which accrue between the
8 date of the judgment and the payment by the demandant of said
9 balance.

R. S. 101, § 29.
G. S. 134, § 27.
1864, 302, §§ 1, 2.
P. S. 173, § 27.
105 Mass. 328.

1 SECTION 26. The demandant may take out a writ of seisin be-
2 fore the amounts due for rents and profits or other damages or for
3 improvements have been assessed: but if the tenant has entered on
4 the record the suggestion of a claim for improvements, the demand-
5 ant, before taking out his writ of seisin, shall furnish such security,
6 or pay into court such amount of money, as the court may order, to
7 secure to the tenant the payment of any balance which may be
8 found due to him for such improvements.

Writ of seisin
before assess-
ment.
1864, 302, §§ 1, 2.
P. S. 173, § 28.

1 SECTION 27. If a balance is found due to the tenant for such
2 improvements, he may have judgment and execution therefor, or
3 he may collect the same, with all reasonable costs and expenses of
4 such collection, out of the security furnished, or may receive the
5 same out of the money paid into court, and the residue thereof
6 shall be returned to the demandant.

Balance due
tenant, how
collected.
1864, 302, § 3.
P. S. 173, § 29.

ELECTION BY DEMANDANT.

1 SECTION 28. If the tenant claims an allowance for improve-
2 ments as before provided, the demandant may, by an entry on the
3 record, require that the value of his estate in the land demanded,
4 without the improvements, be determined by the court, jury or
5 assessors in the manner provided for the assessment of rents and
6 profits and improvements. Such value shall be the value which, at
7 the time of assessment, the land would have had if the improve-
8 ments had not been made by the tenant or a person under whom
9 he claims.

Determination
of value of
estate without
improvements.
1807, 75, § 3.
R. S. 101, §§ 32,
33.
G. S. 134, §§ 30,
31.
P. S. 173, §§ 30,
31.
11 Pick. 219.

1 SECTION 29. After said determination of said value the demand-
2 ant may, at the sitting at which judgment is entered for him, enter
3 upon the record his election to relinquish his estate in the land to
4 the tenant at said value; and upon his motion for further time in
5 which to make such election the court may postpone the entry of
6 judgment without further costs for him.

Election to re-
linquish estate.
1807, 75, § 3.
R. S. 101, §§ 34-
36.
G. S. 134, §§ 32,
33.
P. S. 173, §§ 32,
33.

1 SECTION 30. If the demandant elects to relinquish the land as
2 before provided, the tenant shall thenceforth hold all the estate
3 that the demandant had therein at the date of the writ, if he pays
4 said value thereof in three equal instalments on or before the expira-
5 tion of one, two and three years, respectively, from the time when
6 said election was entered on the record, with interest therefrom on
7 the amount unpaid.

Tenant to hold
the estate, if
he pays such
value.
1807, 75, § 3.
1809, 84.
R. S. 101, §§ 37,
38.
G. S. 134, §§ 34,
35.
P. S. 173, § 34.

1 SECTION 31. Said payments shall be made to the demandant or
2 to the clerk of the court for his use: and if the tenant fails to

Failure to
make such
payment.

1807, 75, § 3.	make any of such payments within the times limited therefor, the	3
1809, 84.		
R. S. 101, §§ 39,	demandant may, at any time within three months after such default	4
40.		
G. S. 134, §§ 36,	of payment, take out his writ of seisin on the judgment recovered	5
37.		
P. S. 173, §§ 35,	by him, and shall take and hold the land without allowance for	6
36.	any improvements made thereon.	7

Remedy if the title fails.

1807, 75, § 3.	SECTION 32. If the tenant or his heirs or assigns, after the land	1
R. S. 101, § 41.	is so relinquished to him, are evicted therefrom by force of a better	2
G. S. 134, § 38.	title than that of the original demandant, the person so evicted	3
P. S. 173, § 37.	may recover from such demandant, or his executor, administrator,	4
	heirs or devisees the amount so paid for the land in an action for	5
	money had and received by the demandant in his lifetime for the	6
	use of the plaintiff, with interest from the time of such payment.	7

Same subject.

1807, 75, § 3.	SECTION 33. If the tenant or the person who holds under him,	1
R. S. 101, § 42.	when impleaded in an action for the recovery of the land, gives	2
G. S. 134, § 39.	notice thereof to the person so liable to refund the purchase money,	3
P. S. 173, § 38.	and permits him to defend the action, a judgment against the	4
	tenant shall be conclusive upon his right to recover the amount so	5
	paid for the land.	6

Same subject.

R. S. 101, § 43.	SECTION 34. If the person impleaded does not give such notice	1
G. S. 134, § 40.	to the person so liable to refund the money paid for the land and	2
P. S. 173, § 39.	permit him to defend the action, the latter may, in any action	3
	afterward brought against him for such money deny the title upon	4
	which the eviction was had; and the party so evicted shall not	5
	recover such money unless he proves that he was evicted by force	6
	of a better title than that of the original demandant.	7

DEATH OF PARTY AFTER JUDGMENT.

Death of either party after judgment and before final settlement.

1809, 84.	SECTION 35. If, after judgment for the demandant, either party	1
R. S. 101, § 44.	dies before the writ of seisin is executed, or before the case is	2
G. S. 134, § 41.	otherwise settled according to the foregoing provisions, any money	3
P. S. 173, § 40.	payable by the demandant or tenant, respectively, may be paid by	4
	him or his executor or administrator, or by a person who is entitled	5
	to the estate under him, to the tenant or demandant, respectively,	6
	or his executor or administrator.	7

Same subject.

R. S. 101, § 45.	SECTION 36. The writ of seisin issued in such case shall be in	1
G. S. 134, § 42.	the name of the original demandant against the original tenant,	2
P. S. 173, § 41.	although either or both of them are dead, and when executed it	3
	shall inure to the benefit of the demandant or of the person who is	4
	entitled to the land under him, as if it had been executed on the	5
	day when the judgment was rendered.	6

LIFE TENANT OR REMAINDERMAN.

Recovery by life tenant from remainderman.

R. S. 101, § 46.	SECTION 37. If a demandant who claims an estate for life only	1
G. S. 134, § 43.	in the land pays an amount allowed to the tenant for improve-	2
P. S. 173, § 42.	ments, he or his executor or administrator shall, at the determina-	3
	tion of his estate, be paid by the remainderman or reversioner the	4

5 value of the improvements as they then exist, shall have a lien on
6 the land for said value as if it had been mortgaged for the payment
7 of such value and may keep possession of the land until such pay-
8 ment is made.

1 SECTION 38. If the amount due from the remainderman or Amount, how
2 reversioner is not agreed on by the parties, it may be determined determined
3 in a suit in equity brought by the remainderman or reversioner; and recovered.
4 and the proceedings shall be the same as in a suit for the redemption R. S. 101, § 47.
5 of a mortgage. G. S. 134, § 44.
P. S. 173, § 43.

1 SECTION 39. The remainderman or reversioner, or those claim- Same subject.
2 ing under him, shall not recover from the adverse party the excess, R. S. 101, § 48.
3 if any, of the rents and profits of the land which accrued after the G. S. 134, § 45.
4 determination of the estate for life, over the amount due for the P. S. 173, § 44.
5 improvements.

1 SECTION 40. The remainderman or reversioner, or those claim- Limitation.
2 ing under him, shall be considered as disseised at the determination R. S. 101, §§ 48,
3 of the life estate, and the suit in equity and all other remedies by 49.
4 action or by entry for the recovery of the land shall be barred as in G. S. 134, §§ 45,
5 other cases of disseisin, and the limitation of three years provided 46.
6 for the redemption of a mortgage shall not apply. P. S. 173, § 45.

EXECUTION TO BE RECORDED.

1 SECTION 41. The officer who serves an execution issuing upon Execution for
2 a judgment for possession shall, within three months after the ser- possession to
3 vice, and before the return of the execution into the clerk's office, be recorded.
4 cause such execution with his return thereon to be recorded in the 1848, 144, § 1.
5 registry of deeds for the county or district in which the land affected G. S. 133, § 55.
6 thereby is situated, and the expense thereof shall be added to his P. S. 173, § 46.
7 charge for service. 7 Gray, 202.

APPLICATION OF CHAPTER.

1 SECTION 42. The provisions of this chapter shall not prevent Demandant's
2 the demandant from maintaining an action of trespass for mesne remedy
3 profits, or for damage done to the land, against any person, except against tres.
4 the tenant in the writ of entry. passers not
P. S. 173, § 47. affected.
6 Cush. 265. R. S. 101, § 31.
G. S. 134, § 29.

1 SECTION 43. The provisions of this chapter relative to the rents Certain pro-
2 and profits to be recovered in a writ of entry, the allowance for visions not to
3 improvements made on the land demanded and the value of the land apply to
4 without the improvements shall not apply to an action brought by actions by
5 a mortgagee, his heirs or assigns, against a mortgagor, his heirs or mortgagees
6 assigns, for the recovery of the land mortgaged. 1807, 75, § 3.
R. S. 101, § 50.
G. S. 134, § 47.
P. S. 173, § 48.

CHAPTER 180.

OF THE WRIT OF DOWER.

When it may
be brought.
C. L. 42, § 1.
1700-1, 22, § 1.
1783, 40, § 1.
R. S. 60, § 5;
102, § 1.
G. S. 135, § 1.

SECTION 1. A woman entitled to dower, if it is not set out to her by the heir or other tenant of the freehold to her satisfaction according to law nor assigned to her by the probate court, may recover the same by a writ of dower as hereinafter provided.

P. S. 174, § 1.

1 Pick. 189, 314.

116 Mass. 69.

Demand for
dower.
1700-1, 22, § 1.
1783, 40, § 1.
1828, 137, § 5.
R. S. 102, § 2.
G. S. 135, § 2.
1878, 67.
P. S. 174, § 2.

SECTION 2. She shall demand her dower of the person seised of the freehold at the time when she makes such demand, unless such person is unknown to her or absent from the commonwealth. She shall not commence an action before the expiration of one month, nor after the expiration of one year, from such demand; but she may make a new demand and commence an action thereon.

—how made.
1855, 438.
G. S. 135, § 3.
P. S. 174, § 3.
12 Met. 557.
6 Cush. 196.

SECTION 3. A demand of dower shall be sufficient if it is in writing, signed by the widow or by her agent or attorney, containing a general description of the land in which the dower is claimed and is given to the tenant of the freehold or left at his last and usual place of abode.

Damages for
detention of
dower.
1700-1, 22, § 2.
1783, 40, § 2.
R. S. 102, § 3.
G. S. 135, § 4.
1869, 418, § 1.
P. S. 174, § 4.

SECTION 4. If the demandant recovers judgment for her dower, she shall in the same action recover damages for its detention, which shall be assessed by a jury under the direction of the court, unless the parties file in court a written agreement that the damages shall be assessed by the commissioners as hereinafter provided.

116 Mass. 69.

129 Mass. 417.

Commissioners
to set out
dower.
C. L. 42, § 1.
1700-1, 22, § 3.
1783, 40, § 2.
R. S. 102, § 6.
G. S. 135, § 7.
1869, 418, §§ 2, 3.
P. S. 174, § 5.
9 Allen, 254.

SECTION 5. If the court finds that the demandant is entitled to her dower, it shall award the interlocutory judgment therefor and issue its warrant to three disinterested commissioners to set out said dower equally and impartially and as conveniently as may be and, if an agreement has been filed as provided in the preceding section, to award damages for its detention.

Proceedings.
1700-1, 22, § 3.
1783, 40, § 2.
R. S. 102, § 6.
G. S. 135, § 7.
1869, 418, §§ 4, 6.
P. S. 174, § 6.

SECTION 6. Said commissioners, before entering upon their duties, shall be sworn faithfully and impartially to execute the warrant, a certificate of which oath shall be made on the warrant by the person who administers it. They shall give notice to the parties of the time and place appointed for setting out the dower, and all of the commissioners shall meet for the performance of any of their duties, but a majority may act.

Report of com-
missioners,
and judgment.
1869, 418, § 7.
P. S. 174, § 7.
See R. L. 128,
§ 83.

SECTION 7. The commissioners shall make and sign a report of their doings, with any damages assessed by them, and return it with their warrant to the court from which said warrant was issued. If their report is confirmed, judgment shall be rendered that the assignment of dower shall be firm and effectual during the life of the demandant, and for the damages as assessed by said commissioners.

1 SECTION 8. A party aggrieved by a judgment rendered under
 2 the provisions of section five, or upon a report of the commissioners
 3 under the provisions of the preceding section, may appeal there-
 4 from in any matter of law apparent upon the record to the supreme
 5 judicial court; but an appeal from the judgment rendered under
 6 the provisions of the preceding section shall not draw in question
 7 the interlocutory judgment.

Appeal.
 1839, 418, § 8.
 P. S. 174, § 8.

1 SECTION 9. When final judgment has been recovered by the
 2 demandant, execution shall issue thereon for possession and for
 3 costs and, if the judgment is for damages also, for damages.

Execution.
 1839, 418, § 9.
 1874, 340.
 P. S. 174, § 9.

1 SECTION 10. The action shall be brought against the person
 2 who is tenant of the freehold at the time when it is commenced.
 3 If the demand was not made on him, he shall be liable for damages
 4 only for the time during which he held the land; but if the de-
 5 mandant recovers her dower and damages in the writ of dower,
 6 she may thereafter recover in an action of tort against the prior
 7 tenant of the freehold, on whom her demand was made, the rents
 8 and profits for the time during which he held the land after the
 9 demand.

Tenant's
 liability for
 damages.
 R. S. 102, §§ 4, 5.
 G. S. 135, §§ 5, 6.
 P. S. 174, §§ 10,
 11.

1 SECTION 11. If the land cannot be divided without damage to
 2 the whole, the dower may be assigned out of the rents or profits,
 3 which shall be received by the demandant as tenant in common
 4 with the other owners.

Assignment
 out of rents.
 R. S. 102, § 7.
 G. S. 135, § 8.
 P. S. 174, § 12.

1 SECTION 12. The provisions of chapter one hundred and thirty-
 2 two relative to the land out of which dower may be claimed and
 3 the manner in which it may be barred, and those of section one of
 4 chapter one hundred and eighty-five relative to the liability of the
 5 tenant for waste, shall apply to proceedings under this chapter.

Certain provi-
 sions appli-
 cable.
 R. S. 102, § 9.
 G. S. 135, § 10.
 P. S. 174, § 14.

CHAPTER 181.

OF THE SUMMARY PROCESS FOR THE POSSESSION OF LAND.

1 SECTION 1. If a forcible entry into land or tenements has been
 2 made, if a peaceable entry has been made and the possession is
 3 unlawfully held by force, if the lessee of land or tenements or a
 4 person holding under him holds possession without right after the
 5 determination of a lease by its own limitation or by notice to quit
 6 or otherwise, if the court of land registration has entered a decree
 7 for confirmation and registration of the title to land, or if a mort-
 8 gage of land has been foreclosed by a sale under a power therein
 9 contained or otherwise, the person entitled to the land or tenements
 10 may recover possession thereof as hereinafter provided.

Persons en-
 titled to sum-
 mary process.
 C. L. 11, § 3.
 1700-1, 14, § 1.
 1784, 8, § 1.
 1825, 89, § 1.
 1835, 114.
 R. S. 104, § 2.
 1847, 267, § 2.
 1851, 233, § 77.
 G. S. 137, §§ 2,
 3.
 1879, 237.
 P. S. 175, § 1.
 1899, 120.
 5 Cush. 563.

8 Cush. 33.	14 Allen, 43.	139 Mass. 54.	165 Mass. 481.
11 Cush. 227.	121 Mass. 85.	151 Mass. 543.	168 Mass. 442.
15 Gray, 319.	126 Mass. 292.	152 Mass. 440.	170 Mass. 29.
6 Allen, 74.	132 Mass. 122, 196.	161 Mass. 335.	172 Mass. 412.
13 Allen, 281.	136 Mass. 111.	163 Mass. 477.	175 Mass. 213.

Form of writ.
1700-1, 14, § 1.
1784, 8, § 1.
1825, 89, § 1.
R. S. 104, §§ 4,
13.
1841, 55, § 2.
1851, 233, §§ 79-
81.
G. S. 137, § 5.
1866, 47.
P. S. 175, §§ 2, 3.
8 Cush. 121.

SECTION 2. Such person may take from a police, district or 1
municipal court, or from a trial justice, a writ in the form of an 2
original summons which shall summon the defendant to answer 3
to the complaint of the plaintiff, that the defendant is in possession 4
of the land or tenements in question, describing them, which he 5
holds unlawfully and against the right of the plaintiff; and no 6
other declaration shall be required. The action shall be brought 7
in the county in which the land or tenements are situated. 8

Judgment and
execution.
1700-1, 14, § 2.
1784, 8, §§ 1, 3.
1825, 89, § 1.
R. S. 104, §§ 6, 7.
1851, 233, §§ 88.
G. S. 137, §§ 7, 8.
P. S. 175, § 5.

SECTION 3. If the court finds that the plaintiff is entitled to the 1
possession of the land or tenements, he shall have judgment and 2
execution for the possession and for his costs. If the plaintiff be- 3
comes nonsuit, or fails to prove his right to the possession, the 4
defendant shall have judgment and execution for his costs. 5

8 Cush. 124.

13 Gray, 272.

98 Mass. 369, 503.

121 Mass. 257.

Storage of
property
removed.
1893, 412, § 1.

SECTION 4. If an officer, in the service of an execution issued on 1
a judgment for the plaintiff for the possession of land or tenements, 2
removes personal property, which belongs to a person other than 3
the plaintiff, from the land or tenements and places it upon the side- 4
walk, street or way on which the land or tenements abut, he may 5
forthwith and before the expiration of the time limited in any city 6
ordinance or town by-law for the removal of obstructions in the 7
street remove such property and cause it to be stored for the benefit 8
of the owners thereof. Whoever accepts the same on storage from 9
such officer shall have a lien thereon for reasonable storage fees and 10
for the reasonable expenses of removing it to the place of storage. 11
But if the owner of such property is present and claims it when it 12
is so removed from the land or tenements, the officer shall not re- 13
move it from the street and store it, and his act of placing such 14
property upon the sidewalk or street shall be held to be the act of 15
the owner thereof, who alone shall be held to answer therefor. 16

Enforcement
of lien.
1899, 412, § 2.

SECTION 5. The lien given by the provisions of the preceding 1
section for the cartage and storage of personal property shall not 2
be enforced by sale of the property stored until it has been kept on 3
storage for at least six months. 4

Appeal or
removal.
Bond.
1825, 89, § 2.
R. S. 104, § 10.
1848, 142, § 1.
G. S. 137, § 9.
1871, 315, § 2.
1874, 271, § 8.
P. S. 175, § 6.
1885, 384, § 5.
1888, 325, § 1.
10 Met. 1.
2 Gray, 309.
121 Mass. 82.
146 Mass. 324.
176 Mass. 236.

SECTION 6. If the defendant appeals from a judgment rendered 1
for the plaintiff for the possession of the land or tenements demanded 2
or if the defendant removes the case as provided in section nineteen 3
of chapter one hundred and sixty-one, he shall, except as provided 4
in the following section, before such appeal or removal is allowed, 5
give a bond in such sum as the court orders, payable to the plaintiff, 6
with sufficient surety or sureties approved by the plaintiff, court or 7
trial justice, conditioned to enter the action in the superior court for 8
that county at the return day next after the appeal is taken or the 9
removal requested, and to pay to the plaintiff, if final judgment is 10
in his favor, all rent which has accrued at the date of the bond, 11
all intervening rent, and all damage and loss which he may sustain 12
by reason of the withholding of the possession of the land or tene- 13
ments demanded and by reason of any injury done thereto during 14
such withholding, with all costs, until the delivery of the possession 15
thereof to him. Upon final judgment for the plaintiff, all money 16

17 then due to him may be recovered by an action of contract upon
18 the bond.

1 SECTION 7. If the action is for the possession of land after the
2 foreclosure of a mortgage thereon, the condition of the bond shall
3 be for the entry of the action and the payment to the plaintiff, if final
4 judgment is in his favor, of all costs and of a reasonable amount as
5 rent of the land from the day when the mortgage was foreclosed
6 until possession of the land is obtained by the plaintiff.

Appeal or removal.
Bond.
1879, 237.
P. S. 175, § 7.
1888, 325, § 2.

1 SECTION 8. If the case is removed upon a plea or suggestion by
2 the defendant which draws in question the title to the freehold, and
3 the court in which the action is determined finds that the defendant
4 originally entered on the land under a lease from the plaintiff or
5 from a person under whom the plaintiff claims, or that he held it
6 under such a lease, and that his said plea or suggestion is frivolous
7 and intended for delay, the court shall cause a certificate thereof to
8 be entered on the record, and the defendant shall thereupon be
9 liable for double the yearly value of the leased land or tenements
10 from the time of the notice to quit the same, which may be recov-
11 ered by an action of contract upon his bond.

Liability of defendant for frivolous plea, etc.
1825, 89, § 3.
R. S. 104, § 11.
G. S. 137, § 10.
P. S. 175, § 8.
1888, 325, § 3.

1 SECTION 9. The judgment in an action under the provisions of
2 this chapter shall not be a bar to any action thereafter to be brought
3 by either party to recover the land or tenements in question, or to
4 recover damages for any trespass thereon: but the amount recov-
5 ered for rent according to the provisions of sections six and eight
6 shall be deducted in any assessment of damages in such subse-
7 quent action by the original plaintiff.

Effect of judgment.
R. S. 104, § 12.
1851, 233, § 13.
G. S. 137, § 11.
P. S. 175, § 9.

1 SECTION 10. There shall be no recovery under the provisions
2 of this chapter of any land or tenements of which the defendant,
3 his ancestors or those under whom he holds the land or tene-
4 ments have been in quiet possession for three years next before the
5 commencement of the action unless the defendant's estate therein
6 is ended.

No recovery after possession for three years.
1700-1, 14, § 4.
1784, 8, § 3.
R. S. 104, § 3.
1836, 4, § 14.
1851, 233, § 78.
G. S. 137, § 4.

P. S. 175, § 10.

12 Gray, 206.

175 Mass. 213.

CHAPTER 182.

OF PROCEEDINGS FOR THE SETTLEMENT OF TITLE TO LAND.

- SECTIONS 1-5. — Petition to Require Action to try Title.
- SECTIONS 6-10. — Suits in Equity to Quiet Title.
- SECTIONS 11-14. — Determination of Validity of Certain Encumbrances.
- SECTION 15. — Discharge of Mortgages.

PETITION TO REQUIRE ACTION TO TRY TITLE.

1 SECTION 1. If the record title of land is clouded by an adverse
2 claim, or by the possibility of such claim, a person in possession of
3 such land who claims an estate of freehold therein or an unexpired
4 term of not less than ten years, and a person who by force of the
5 covenants in a deed or otherwise may be liable in damages, if

Petition to compel snpposed claimant to try title.
1851, 233, § 66.
1852, 312, § 52.
G. S. 134, § 49.
1873, 178.

P. S. 176, §§ 1, 2.
1893, 340, §§ 1, 3.
114 Mass. 340.
137 Mass. 147,
376.
145 Mass. 112.
148 Mass. 552.
150 Mass. 73.
153 Mass. 42.
162 Mass. 438.
168 Mass. 201,
384.
171 Mass. 46,
367.
177 Mass. 501.

such claim should be sustained, may file a petition in the superior court stating his interest, describing the land, the claims and the possible adverse claimants so far as known to him, and praying that such claimants may be summoned to show cause why they should not bring an action to try such claim. If no better description can be given, they may be described generally, as the heirs of A B or the like. Two or more persons who have separate and distinct parcels of land in the same county and hold under the same source of title, or persons who have separate and distinct interests in the same parcel or parcels, may join in a petition against the same supposed claimants. If the supposed claimants are residents of this commonwealth, the petition may be inserted like a declaration in a writ, and served by a copy, like a writ of original summons. Whoever is in the enjoyment of an easement shall be held to be in possession of land within the meaning of this section.

Proceedings
upon petition.
1851, 233, § 66.
1852, 312, § 53.
G. S. 134, § 49.
P. S. 176, § 2.
1893, 340, § 2.

SECTION 2. If the petition is not so served, the court shall order notice of such petition to be given by publication to the supposed claimants, whether residents or non-residents of this commonwealth. Such notice shall bind all the world, but the court may also require personal or other notice, and if, upon return of the order of notice duly executed, the parties notified do not appear within the time limited or, having appeared, disobey the lawful order of the court to try their claim, the court shall enter a decree that they be forever barred from having or enforcing any such claim adversely to the petitioner, his heirs or assigns, in the land described.

— upon ap-
pearance.
1851, 233, §§ 66,
67.
1852, 312, §§ 52,
53.
G. S. 134, §§ 49,
50.
P. S. 176, § 2.
1893, 340, § 3.
4 Gray, 82.
102 Mass. 374.
103 Mass. 144.
137 Mass. 150.
145 Mass. 112.
148 Mass. 552.
160 Mass. 471.

SECTION 3. If the persons notified or summoned appear and disclaim all right and title adverse to the petitioner, they shall recover their costs. If they claim title, they shall by answer show why they should not be required to bring an action to try such title; and the court shall enter an appropriate decree relative to bringing and prosecuting such action. If the party or parties against whom a judgment or decree for a conveyance, release or acquittance may be rendered by any court in this commonwealth do not comply therewith, within the time therein limited, such judgment or decree shall, subject to the provisions of the following section, have the same effect as if the conveyance, release or acquittance had been executed conformably thereto.

Rights of party
against whom
a judgment or
decree has
been rendered.
1893, 340, § 4.

SECTION 4. A party against whom, without other notice than publication in a newspaper, a judgment or decree has been rendered under the provisions of the two preceding sections and whose right is barred thereby may recover from the party or parties in whose favor such judgment or decree was entered, their heirs or devisees, the value at the time action is brought of any interest or right, except of improvements made by the defendants, of which he may have been deprived by such judgment or decree, unless at the date of bringing such action an action which, but for such judgment or decree, he might have maintained for the recovery of such interest or the enforcement of such right would have been barred by the statute of limitations. Such judgment or decree may require the giving of a bond to respond to any such action brought within five years after the entry of such judgment or decree.

1 SECTION 5. The provisions of the four preceding sections shall
2 not apply to any property, right, title or interest of the common-
3 wealth.

Application of
preceding
sections.
1893, 340, § 7.

SUITS IN EQUITY TO QUIET TITLE.

1 SECTION 6. If in a suit in equity to quiet or establish the title to
2 land situated in this commonwealth or to remove a cloud from the
3 title thereto, it is sought to determine the claims or rights of any
4 persons who are unascertained, not in being, unknown or out of
5 the commonwealth, or who cannot be actually served with process
6 and made personally amenable to the decree of the court, such per-
7 sons may be made defendants and, if they are unascertained, not in
8 being or unknown, they may be described generally, as the heirs or
9 legal representatives of A B, or such persons as shall become heirs,
10 devisees or appointees of C D, a living person, or persons claiming
11 under A B. It shall not be necessary for the maintenance of such
12 suit that the defendants shall have a claim or the possibility of a claim
13 resting upon an instrument the cancellation or surrender of which
14 would afford the relief desired: but it shall be sufficient that they
15 claim or may claim by purchase, descent or otherwise, some right,
16 title, interest or estate in the land which is the subject of the suit
17 and that their claim depends upon the construction of a written in-
18 strument or cannot be met by the plaintiffs without the production
19 of evidence. Two or more persons who claim to own separate and
20 distinct parcels of land in the same county by titles derived from a
21 common source, or two or more persons who have separate and dis-
22 tinct interests in the same parcel, may join as plaintiffs in any suit
23 brought under the provisions of this section.

Suits in equity
to quiet title.
1897, 522, § 1.
1898, 457.
1899, 444.
170 Mass. 328.

1 SECTION 7. If in such suit the court finds that actual service
2 cannot be, or has not been, made upon a defendant, it may at the
3 request of the plaintiff order notice of the suit to be posted in a
4 conspicuous place on the land or to be published in a newspaper
5 within or without the commonwealth, or both, or to be given in such
6 other manner as it considers most effectual, and may also require
7 personal notice to be given. Notice given under the provisions of
8 this section shall be constructive service on all the defendants.

Notice.
1897, 522, § 2.

1 SECTION 8. If, after notice has been given or served as provided
2 in the preceding section and the time limited in such notice for the
3 appearance of the defendants has expired, the court finds that there
4 are or may be defendants who have not been actually served with
5 process within the commonwealth and who have not appeared in
6 the suit, it may of its own motion, or on the representation of any
7 party, appoint a guardian ad litem or next friend of any such de-
8 fendant, and if any such defendants have or may have conflicting
9 interests, it may appoint different guardians ad litem or next friends
10 to represent them.

Guardian ad
litem.
1897, 522, § 3.

1 SECTION 9. The cost of appearance of any such guardian ad
2 litem or next friend, including the compensation of his counsel,
3 shall be determined by the court and paid by the plaintiff, against
4 whom execution may issue therefor in the name of the guardian ad
5 litem or next friend.

—cost of
appearance of,
how deter-
mined.
1897, 522, § 4.

Effect of
decree.
1897, 522, § 5.
170 Mass. 328.

SECTION 10. After all the defendants have been served with process or notified as provided in section seven and after the appointment of a guardian ad litem or next friend, if such appointment has been made, the court may proceed as though all the defendants had been actually served with process. Such suit shall be a proceeding in rem against the land, and a decree establishing or declaring the validity, nature or extent of the plaintiff's title may be entered, and shall operate directly on the land and shall have the force of a release made by or on behalf of all defendants of all claims inconsistent with the title established or declared thereby. The provisions of this and the four preceding sections shall not prevent the court from also exercising jurisdiction in personam against the defendants who have been actually served with process and who are personally amenable to its decrees.

DETERMINATION OF VALIDITY OF CERTAIN ENCUMBRANCES.

Determination
of validity of
possible en-
cumbrances.
1889, 442, §§ 1, 2.
1890, 427, § 2.
173 Mass. 68.

SECTION 11. If the title to land appears of record to be affected by a possible condition, restriction, reservation, stipulation or agreement made or imposed more than thirty years prior to the commencement of the proceedings hereinafter provided for, a person who has a freehold estate, vested or contingent, in possession, reversion or remainder, in said land, or in any undivided or any aliquot part thereof, or any interest therein which may become a freehold estate, and any person who has conveyed such estate or any such interest therein with covenants of title or warranty, may file a petition under oath in the superior court for the purpose of determining the validity, or defining the nature and extent, of such possible condition or other encumbrance, against any person who might be entitled in any event to enforce it or avail himself thereof. Two or more persons who own in severalty different portions of such estate or different interests therein may join in such petition, or two or more such defects of the same general character in the title to the same parcel of land or to different portions of the same parcel of land may be set forth in the same petition, and if the petition is contested the court shall make an appropriate order for separate issues.

Description of
respondents.
1889, 442, § 2.

SECTION 12. If it is averred in the petition that there are necessary or proper respondents whose names are unknown to the petitioner, they may be described generally, as heirs or devisees of a person deceased, as persons claiming under certain persons named, as the owners of certain land, or otherwise, and if it is so averred that the true name of a respondent cannot be ascertained, he shall be described as accurately as practicable. If it is so averred that there are classes of necessary or proper respondents whom it is impracticable and unnecessary to name and to serve with process individually, they may be described generally. The court may, if in its opinion the petitioner can and should do so, require him by amendment to name or describe respondents more particularly.

Notice and
appointment
of agent.
1889, 442, § 3.

SECTION 13. The court shall prescribe the notice to be given to non-resident respondents, to respondents whose residences are unknown, to unknown or unnamed respondents, and to any other re-

4 spondents upon whom for any reason service cannot be made. If
5 the court finds that there are respondents to be affected by the
6 decree, who have not had actual notice of the petition, it shall
7 appoint a disinterested person to act for them.

1 SECTION 14. Upon service of such notice, the court shall have
2 jurisdiction of all persons who are made respondents to the petition
3 in the manner above provided, and shall, upon a hearing, make a
4 decree determining the validity, nature or extent of any such pos-
5 sible condition or other encumbrance, which shall be effectual to
6 exclude all the respondents from any claim thereunder contrary to
7 such determination, and shall have the same effect as a release by
8 such respondents of such claims. The court may award costs in
9 its discretion.

Decree.
1889, 442 §§ 4, 5.

DISCHARGE OF MORTGAGES.

1 SECTION 15. If the record title of land is encumbered by an
2 undischarged mortgage, and the mortgagor and those having his
3 estate therein have been in uninterrupted possession of the land,
4 either for twenty years after the expiration of the time limited in
5 the mortgage for the full performance of the condition thereof, or
6 for twenty years from the date of a mortgage which was not given
7 to secure the payment of money or a debt but to secure the mort-
8 gagee against a contingent liability which has so ceased to exist
9 that no person will be prejudiced by the discharge thereof, the
10 mortgagor, or those having his estate in the land or any person
11 named in section eleven may file a petition in the superior court;
12 and if, after such notice by publication or otherwise as the court
13 orders, no evidence is offered of a payment on account of the debt
14 secured by said mortgage within twenty years after the expiration
15 of the time limited for the performance of the condition thereof or
16 of any other act within said time in recognition of its existence as a
17 valid mortgage, or if the court finds that such contingent liability
18 has ceased to exist and that the mortgage ought to be discharged,
19 it may enter a decree, reciting the facts and findings, which shall,
20 within thirty days after its entry, be recorded in the registry of
21 deeds for the county or district in which the land lies, and no
22 action to enforce a title under said mortgage shall thereafter be
23 maintained. Two or more persons who own in severalty different
24 portions or different interests such as are described in section eleven
25 in the land subject to the mortgage may join in one petition and
26 two or more defects arising under different mortgages affecting one
27 parcel of land may be set forth in the same petition. If the petition
28 is contested, the court shall make an appropriate order for separate
29 issues.

Discharge of
mortgages.
1882, 237.
1885, 283.
1890, 427, § 1.
155 Mass. 57.
160 Mass. 407.

CHAPTER 183.

OF THE DETERMINATION OF BOUNDARIES OF FLATS.

1 SECTION 1. One or more persons who hold land or flats adjacent
2 to or covered by high water may apply by petition to the superior
3 court for the county in which any part of such land or flats lies for

Petition.
1864, 306, §§ 1, 2.
1867, 245.
1871, 338, §§ 1, 2.
P. S. 177, § 1.

14 Allen, 71. the settlement and determination of the lines and boundaries of their 4
117 Mass. 593. ownership in such flats. 5

Proceedings.
1864, 306, § 3. SECTION 2. Upon such petition the court may by a warrant 1
1871, 338, §§ 2-4. appoint one or more commissioners who shall, before entering upon 2
P. S. 177, §§ 2-4. their duties, be sworn to faithfully and impartially execute the war- 3
rant, and a certificate of such oath shall be made on the warrant by 4
the person who administers it. They shall notify all persons inter- 5
ested, by personal service or by publication as the court orders, to 6
appear at a time and place named and be heard relative to a pro- 7
posed survey of such flats, and thereafter they shall survey the flats 8
of the petitioners and all adjacent flats owned by other parties 9
whose rights may be affected by a determination of the lines of the 10
flats of the petitioners, shall determine the boundary lines thereof 11
and report to the court the boundaries established for each owner, 12
with a plan of the several portions of flats showing the lines estab- 13
lished for each owner, which, after its approval, shall by order of the 14
court be recorded in the registry of deeds for the county or district 15
in which said flats lie. The proceedings upon such petitions shall 16
be according to sections two and four to seven, inclusive, of chapter 17
one hundred and eighty-four, so far as said sections are applicable 18
thereto. 19

Effect of report
and plan.
1871, 338, § 3. SECTION 3. When the report and plan of said commissioners 1
P. S. 177, § 3. has been accepted by the court and recorded as aforesaid, it shall 2
forever fix and determine the rights of all persons and parties, 3
except where definite boundary lines have been established by par- 4
ties legally authorized to establish them. 5

Costs.
1871, 338, § 5. SECTION 4. The expenses and charges of the commissioners 1
P. S. 177, § 5. shall be allowed by the court; the other costs shall be taxed in the 2
129 Mass. 413. usual manner, and the whole shall be apportioned by the court 3
among all parties interested in the determination of the boundary 4
lines over such flats, and shall be paid in proportion to the value 5
of the interests which they, respectively, hold in such flats. 6

Subsequent
purchasers,
etc., may be
made parties.
1878, 103. SECTION 5. Whoever, during the pendency of proceedings for 1
P. S. 177, § 6. the division of flats, acquires by purchase, devise or descent, or 2
by the enforcement of a mortgage or lien an interest or title in 3
or to any flats which are the subject matter of such proceedings, 4
may by order of the court be made a party to such proceedings, 5
and shall be chargeable with such share of the expenses as the 6
court orders. 7

Rights of com-
monwealth.
1864, 306, § 4. SECTION 6. Proceedings under the provisions of this chapter 1
1871, 338, § 6. shall not affect any right or title of the commonwealth to any land 2
P. S. 177, § 7. or flats, unless it consents to become a party to such proceedings. 3

CHAPTER 184.

OF THE PARTITION OF LAND.

- SECTION 1. — Who may have.
- SECTIONS 2-30. — In the Superior Court.
- SECTIONS 31-33. — In the Probate Court.
- SECTIONS 34-45. — Of Estates of Deceased Persons.
- SECTIONS 46-57. — General Provisions.
- SECTIONS 58, 59. — Division of Water Rights.

WHO MAY HAVE.

- 1 SECTION 1. Joint tenants or tenants in common of land may

2 be compelled to divide such land as provided in this chapter: and

3 the writ of partition at common law is hereby abolished.
- R. S. 103, § 1.

G. S. 136, § 1.

P. S. 178, § 1.

14 Mass. 434.
- 5 Met. 1.

10 Met. 408.

3 Gray, 111.

15 Gray, 499.
- 8 Allen, 186.

10 Allen, 144.

109 Mass. 181, 513.

112 Mass. 42.
- 135 Mass. 317.

140 Mass. 82.

163 Mass. 325.

170 Mass. 60.
- Who may have.

1693, 8, § 1.

1783, 41, § 1; 52, § 2.

1785, 62, § 2.

IN THE SUPERIOR COURT.

- 1 SECTION 2. Joint tenants or tenants in common who, except as pro-

2 vided in section fifty, have, respectively, an estate in possession of

3 land may file a petition for partition thereof in the superior court for

4 a county in which any part of the land lies, and said court may there-

5 upon cause partition of any land so held within the commonwealth,

6 the partition of which is sought by said petition, to be made, and

7 the shares of the petitioners to be set off and assigned. The residue

8 of the land shall remain for the person entitled thereto, and be sub-

9 ject, if more than one person is so entitled, to a future partition.
- Petition to superior court.

1742-3, 24, § 1.

1748-9, 12, § 1.

1783, 41, § 1.

R. S. 103, §§ 2, 3.

1842, 14, § 1.

G. S. 136, §§ 2, 3.

P. S. 178, §§ 2, 3.

1888, 346, § 1.

1892, 169, § 1.

7 Mass. 503.

13 Pick. 237, 251.

13 Met. 462.

12 Cush. 170.

3 Gray, 111.
- 7 Allen, 196.

109 Mass. 181, 513.

163 Mass. 325.

- 1 SECTION 3. A tenant for years, unless at least twenty years of

2 his term remain unexpired, shall not maintain such petition against a

3 tenant of the freehold; but if two or more persons hold jointly or

4 in common as tenants for a term of years, any of them may have

5 their shares set off from the others, and such partition shall con-

6 tinue in force only for so long as the estate set off endures.
- by tenant for years.

R. S. 103, §§ 4, 5.

G. S. 136, §§ 4, 5.

P. S. 178, § 4.

15 Mass. 155.

- 1 SECTION 4. The petition shall set forth the rights and titles, so

2 far as known to the petitioner, of all persons interested who would

3 be bound by the partition, stating whether they have an estate of

4 inheritance, for life or for years, whether in possession, remainder

5 or reversion, and whether vested or contingent. If the petitioner

6 holds an estate for life or years, the remainderman or reversioner

7 shall be so interested and shall be entitled to notice.
- form of.

R. S. 103, § 6.

G. S. 136, § 6.

P. S. 178, § 5.

9 Allen, 260.

- 1 SECTION 5. A summons to appear and answer to the petition,

2 signed by the clerk of the court to which it is addressed, shall be

3 served upon each of the parties named in the petition as interested

4 in the land, if he can be found in this commonwealth, by delivering
- Notice.

R. S. 103, §§ 7, 11.

G. S. 136, §§ 8, 12.

P. S. 178, §§ 7, 10.

to him or leaving at the place of his abode fourteen days at least before the return day a copy of the petition and summons, attested by the clerk or by the officer who serves the process. Such further notice, if any, as the court shall order shall be given.

Notice to
absent and
unknown
persons.

1742-3, 24, § 3.
1748-9, 12, § 2.
1753-4, 18, § 2.
1783, 41, § 3.
R. S. 103, §§ 9,
10.
G. S. 136, §§ 10,
11.
P. S. 178, § 9.

SECTION 6. If any of the persons named in the petition as interested in the land are absent from the commonwealth, or if the names of any persons so interested who would be bound by the partition are unknown to the petitioner, the court shall order notice to be given to such persons by a publication of the petition or of the substance thereof, with the order of the court thereon, in one or more newspapers designated in the order, or by delivering to any absent party who is known an attested copy of the petition and order, or in such other manner as the court may order.

Continuance in
certain cases.
R. S. 103, § 12.
G. S. 136, § 13.
P. S. 178, § 11.

SECTION 7. If at any stage of the proceedings it appears to the court that any person interested, whether named in the petition or not, is out of the commonwealth and has not had opportunity to appear and answer, the petition shall be continued until such person has had time to appear and answer.

Who may
appear and
answer.

1786, 53, § 1.
R. S. 103, § 14.
G. S. 136, § 16.
P. S. 178, § 14.
9 Pick. 66.

SECTION 8. Any person interested in the land may appear and may plead or answer, either separately or jointly with any other respondents, any matter tending to show that the petitioner ought not to have partition as prayed for, either in whole or in part, and the further pleadings shall be as in actions at common law.

Reply of peti-
tioner to per-
son not named.
R. S. 103, §§ 15,
16.
G. S. 136, §§ 17,
18.
P. S. 178, § 15.
148 Mass. 42.

SECTION 9. If a person not named in the petition appears and pleads or answers, the petitioner may reply that the respondent has no estate or interest in the land and may also in the same replication include any other answer which he might have made if he had not disputed the respondent's right to appear. If upon such replication it is found that the respondent has no estate or interest in the land, his plea or answer shall not be further considered.

If two or more
respondents
claim the same
share.
R. S. 103, §§ 41,
42.
G. S. 136, §§ 38,
39.
P. S. 178, §§ 16,
17.

SECTION 10. If two or more respondents claim the same share, the court shall, by issues to a jury or otherwise, determine which shall be admitted to appear; and if partition is made, the share so claimed shall be left and shall be ultimately set off to whichever of the parties in an action brought between themselves proves his title. A party who is not permitted to appear shall be concluded by the partition and assignment of shares, but may bring an action as provided in section twenty-six against the other claimants.

Costs of trial.
1786, 53, § 1.
R. S. 103, § 17.
G. S. 136, § 19.
P. S. 178, § 18.
4 Pick. 246.
19 Pick. 539.
11 Allen, 104.

SECTION 11. If upon the trial of an issue, it is found that the petitioner is entitled to have partition as prayed for, he shall recover and have execution for his costs of the trial against the party who objected to such partition. If such issue is found against him, in whole or in part, the respondent shall recover against him and have execution for his costs of the trial; but the petitioner may have judgment for partition and assignment to him of such part of the land, if any, as he is found to be entitled to.

1 SECTION 12. If it is found that the petitioner is entitled to have
 2 partition for the share claimed or for any less share, the court shall
 3 award the interlocutory judgment that partition be made. The
 4 petition shall not be defeated by the payment by a party of a mort-
 5 gage, lien, tax or other encumbrance upon the land if the other
 6 parties are entitled to redeem from such payment: but the inter-
 7 locutory judgment shall contain such terms and conditions relative
 8 to redemption from a contribution on account of such payments as
 9 may be in accordance with the rules of equity.

Interlocutory
 judgment.
 1786, 53, § 1.
 R. S. 103, § 18.
 G. S. 136, § 20.
 P. S. 178, § 19.
 1889, 468, § 1.
 3 Mass. 299.
 11 Cush. 168.

1 SECTION 13. The court shall thereupon appoint and issue a
 2 warrant to three or five disinterested commissioners to make the
 3 partition and to set off to the petitioner the share belonging to
 4 him, which share shall be expressed in the warrant. The commis-
 5 sioners before entering upon their duties shall be sworn to faithfully
 6 and impartially execute the warrant, a certificate of which oath shall
 7 be made on the warrant by the person who administers it. They
 8 shall give notice of the time and place appointed for making the
 9 partition to all known persons within the commonwealth interested
 10 therein. All the commissioners shall meet for the performance of
 11 any of their duties, but a majority may act. The commissioners
 12 shall make and sign a report of their doings and return it with their
 13 warrant. If their report is confirmed, judgment shall be rendered
 14 that the partition be firm and effectual forever.

Commission-
 ers.
 1742-3, 24, §§ 1, 2.
 1748-9, 12, § 1.
 1759-60, 31, § 1.
 1783, 41, §§ 1, 3.
 R. S. 103, §§ 20,
 22-24, 29.
 G. S. 136, §§ 21-
 24, 29.
 P. S. 178, §§ 20-
 24.
 138 Mass. 436.
 152 Mass. 137.

1 SECTION 14. The expenses and charges of the commissioners
 2 shall be allowed by the court; the other costs shall be taxed in the
 3 usual manner; and the whole, except the costs of a trial of issues,
 4 shall be paid in such manner as the court may order. If there is
 5 more than one petitioner, each shall pay such share of the costs and
 6 charges as is proportionate to his interest. If it is found that the
 7 petitioner is entitled to have partition as prayed for, he shall re-
 8 cover against the respondent named in the petition who opposes
 9 the partition costs after the filing of the plea or answer, which shall
 10 be taxed as in other civil cases.

Costs.
 R. S. 103, § 49.
 1857, 149.
 G. S. 136, §§ 44,
 45.
 1877, 106.
 P. S. 178, §§ 29,
 30.
 5 Allen, 96.
 11 Allen, 104.
 136 Mass. 126.

1 SECTION 15. Petitioners may at their election have their shares
 2 set off together or in severalty. R. S. 103, § 21. G. S. 136, § 25. P. S. 178, § 25.

Shares set off
 together or in
 severalty.

1 SECTION 16. If a part of the land cannot be divided without
 2 great inconvenience to the owners or is of greater value than the
 3 share of any party, or if all the land cannot be divided without
 4 such inconvenience, the whole or any part thereof may be set off to
 5 any one or more of the parties, upon payment by him or them to
 6 any one or more of the others of such amounts of money as the
 7 commissioners may award to make the partition just and equal; or
 8 the commissioners may assign the exclusive occupancy and enjoy-
 9 ment of the whole, or of the part, to each of the parties succes-
 10 sively for certain specified times in proportion to their respective
 11 interests.

Partition of
 land indivis-
 ible.
 1759-60, 30, § 2.
 1783, 41, § 2.
 R. S. 103, §§ 25,
 26.
 G. S. 136, § 26.
 P. S. 178, § 26.
 11 Gray, 490.

1 SECTION 17. If the whole or any specific part of the land is
 2 thus assigned, the person entitled for the time being to the exclusive

Effect of ex-
 clusive occu-
 pancy.

R. S. 103, § 27.
G. S. 136, § 27.
P. S. 178, § 27.

occupancy shall be liable to his cotenants in an action of tort brought by them jointly or severally, for any injury to the land caused by his misconduct, as a tenant for years under a common lease without express covenants would be liable to his landlord.

Rights against
trespassers.
R. S. 103, § 28.
G. S. 136, § 28.
P. S. 178, § 28.

SECTION 18. While the land is in the exclusive occupancy of a cotenant under such assignment, he shall have the same remedy against trespassers or other tort feors as a lessee for the term assigned and he and all other tenants in common may recover such other and further damages as they have sustained by the same trespass or injury, as if they were lessees of the land. Joint damages recovered by such tenants in common under the provisions of this or the preceding section shall be divided among them, according to their respective interests, by the court in which the judgment is recovered.

Improve-
ments.
1850, 278, § 1.
G. S. 136, § 46.
P. S. 178, § 31.
12 Cush. 170.
105 Mass. 412.
131 Mass. 480.
135 Mass. 317.

SECTION 19. If the petitioner recovers judgment and it appears by the pleadings that the respondent denied the right and title of the petitioner to any part of the land and claimed the same as his own estate in fee, and if it is found that the respondent held the same under a title which he believed to be good, he shall be entitled to compensation for the value of any buildings or improvements on the land made or erected by himself or by any other person under whom he claims, and such value shall be ascertained as provided for tenants in real actions by chapter one hundred and seventy-nine; and he shall in like manner be liable for the petitioner's share of the rents, profits and other damages mentioned in said chapter.

Same subject.
1850, 278, § 2.
G. S. 136, § 47.
P. S. 178, § 32.

SECTION 20. If any amount remains due to the respondent for improvements, after deducting the rents, profits or other damages for which he is found liable, the petitioner shall not have judgment for partition until he pays such amount to the respondent, or to the clerk of the court for his use; and the petitioner shall not be entitled to any rents or profits which may accrue after verdict and before he makes such payment. The provisions of this and the preceding section shall apply to all processes of partition.

Appeal.
1786, 53, § 2.
R. S. 103, §§ 19,
31.
G. S. 136, § 30.
P. S. 178, § 33.

SECTION 21. A party who is aggrieved by a judgment rendered in the superior court under the provisions of section twelve, or upon a report of commissioners under the provisions of this chapter, may appeal therefrom in any matter of law apparent upon the record to the supreme judicial court; but an appeal from the judgment upon the report of commissioners shall not draw in question the interlocutory judgment.

Conclusiveness
of final judg-
ment.
R. S. 103, § 33.
G. S. 136, § 32.
P. S. 178, § 35.
1889, 468, § 2.
2 Mass. 462.
8 Met. 196, 596.
2 Allen, 118.
138 Mass. 436.
176 Mass. 454.

SECTION 22. The final judgment upon a petition for partition, which shall not be entered until the court finds that the terms and conditions of the interlocutory judgment have been complied with, shall, except as hereinafter provided, be conclusive as to the rights of property and possession of parties and privies to the judgment, including all persons who might by law have appeared and answered.

1 SECTION 23. If any person who was a part owner with the peti- New partition.
 2 tioner, and for whom a share is left upon the partition, is out of the 1742-3, 24, § 4.
 3 commonwealth when the summons or notice to him is served and 1748-9, 12, § 4.
 4 does not return in time to appear and answer, he may, within three 1783, 41, § 3.
 5 years after the final judgment, apply to the same court for a new R. S. 103, §§ 34,
 6 partition; and if, upon a hearing of all parties interested, it is 35.
 7 found that the share left for the applicant was less than he was enti- G. S. 136, § 33.
 8 tled to, or that the part left for him was not at the time equal in P. S. 178, § 36.
 9 value to his share of the land, the court may order a new partition
 10 which shall be made in the manner before provided.

1 SECTION 24. In such new partition the commissioners shall not — how made.
 2 be required to make a new division of all the land, but may 1783, 41, § 3.
 3 take from any share or shares and add to any other or others so R. S. 103, § 36.
 4 much as is necessary to make the partition just and equal, valuing G. S. 136, § 34.
 5 the whole in the state in which it was when first divided; or if an P. S. 178, § 37.
 6 equal partition cannot be made without inconvenience to the own-
 7 ers, the commissioners may award money to be paid by one party
 8 to another, as before provided, to make the partition just and equal.

1 SECTION 25. A person, who has not appeared and answered and Remedy of
 2 who claims to hold in severalty any part of the land, shall not be stranger claim-
 3 concluded by the judgment, but may bring an action for the land ing in sev-
 4 claimed by him against any or all of the petitioners or respondents eralty.
 5 or of the persons holding under them within the time in which he R. S. 103, § 38.
 6 might have brought such action if the judgment for partition had G. S. 136, § 35.
 7 not been rendered. P. S. 178, § 38.
 2 Mass. 462.
 5 Met. 335.

1 SECTION 26. A person, who has not appeared and answered and — of stranger
 2 who claims the share assigned to or left for any of the supposed claiming a
 3 part owners in the judgment for partition, shall be concluded by share assigned.
 4 the judgment, so far as it relates to the partition and the assignment R. S. 103, §§ 39,
 5 of the shares, as if he had been a party to the action but he may 40.
 6 bring his action for the share claimed by him against the person to G. S. 136, §§ 36,
 7 whom it was assigned or for whom it was left. Such action shall 37.
 8 be brought against the tenant in possession, as if the demandant P. S. 178, §§ 39,
 9 had originally claimed the specific parcel demanded instead of an 40.
 10 undivided part of the land; and it may be brought within the time
 11 in which it might have been brought if no such judgment for par-
 12 tition had been rendered.

1 SECTION 27. A person, who has not appeared and answered and — of stranger
 2 who claims part of the land as a part owner with any of those claiming as
 3 who were parties to the action, shall, if the share so claimed was part owner.
 4 not known or not allowed and left for him in the process of parti- R. S. 103, §§ 43,
 5 tion, be concluded by the judgment so far as it relates to the par- 44.
 6 tition, but may bring an action for the share claimed by him against G. S. 136, § 40.
 7 each of the persons holding any part of the land under the judgment P. S. 178, § 41.
 8 for partition and, if he prevails, shall recover against each the same 22 Pick. 316.
 9 proportion of the part so held that he was entitled to claim out of
 10 all the land before the partition.

1 SECTION 28. The heir or devisee of a person for whom a share Death of part
 2 was left or assigned and who died before the partition shall not be owner before
 the partition.

R. S. 103, § 45.
G. S. 136, § 41.
P. S. 178, § 42.

barred from claiming the share which belonged to the ancestor or
devisor because the ancestor or devisor was a party to the action,
but shall have the same rights and remedies as if the ancestor or
devisor had not been such party and had not had notice of the pro-
ceedings.

Party evicted.
R. S. 103, § 46.
G. S. 136, § 42.
P. S. 178, § 43.

SECTION 29. If a person to or for whom a share has been assigned
or left is evicted by a person who at the time of the partition had a
title older and better than the title of those who were parties to the
action, the person so evicted may have a new partition of the resi-
due, as if partition had not been made.

Mortgagee,
etc., of part
owner.
R. S. 103, § 47.
G. S. 136, § 43.
P. S. 178, § 44.
154 Mass. 181.

SECTION 30. A person having a mortgage, attachment or other
lien on the share of a part owner shall be concluded by the judg-
ment, so far as it relates to the partition and the assignment of the
shares; but his lien shall remain in full force upon the part assigned
to or left for such part owner.

IN THE PROBATE COURT.

Jurisdiction.
1869, 121, § 1.
1874, 266, § 1.
P. S. 178, § 45.

SECTION 31. Probate courts shall have concurrent jurisdiction
with the superior court of petitions for partition of land held by
joint tenants or tenants in common if the shares do not appear to
be in dispute or uncertain.

Removal to
superior court.
1874, 266, §§ 1, 2.
P. S. 178, § 46.

SECTION 32. If it is found by the probate court in which such
petition is filed that the shares are in dispute or uncertain, the court
may, or, at the request of any party in interest, shall, order the case
to be removed to the superior court. The petitioner shall enter the
petition in the superior court for the same county at the return day
next after the order for removal, with certified copies of all papers
filed in the case, and the petition shall be tried and determined as
if originally commenced therein.

Proceedings in
probate courts.
1874, 266, § 3.
P. S. 178, § 47.

SECTION 33. If partition is made in the probate court, it shall
be made as hereinafter provided for partition of the estate of a de-
ceased person; and if a party dies during the pendency of the par-
tition, the share or proportion belonging to him may be assigned in
his name to his estate, to be held and disposed of as if the petition
had been made prior to his decease.

OF ESTATES OF DECEASED PERSONS.

Partition be-
tween heirs,
 devisees, etc.
1742-3, 21, § 1.
1752-3, 13, § 1.
1783, 36, § 12.
1817, 100, § 24.
R. S. 103, §§ 50,
53.
G. S. 136, §§ 48,
51.

SECTION 34. The probate court in which the estate of a deceased
person is in course of settlement or has been settled may, upon peti-
tion of any party interested, make partition of all the land of such
deceased person, lying within the commonwealth, among his heirs
or devisees and all persons who hold under them by conveyance
or otherwise as hereinafter provided.

21 Pick. 101.

3 Gray, 536.

148 Mass. 594.

159 Mass. 470.

Notice.
R. S. 103, § 53.
G. S. 136, § 51.
P. S. 178, § 51.
1882, 55.

SECTION 35. Notice of the petition shall be given to all parties
interested by serving the same fourteen days at least before the
time appointed for the hearing on the parties personally, if they

4 can be found within the commonwealth, and, if not, it shall be pub-
5 lished once in each of three successive weeks in such newspaper or
6 newspapers as the court shall order.

1 SECTION 36. The court shall appoint a disinterested person to
2 act for any heir, devisee or other person interested in the land, who
3 is absent from the commonwealth, in all things relative to the par-
4 tition; and if an infant or insane person is interested in the land
5 and has no guardian within the commonwealth, it shall appoint a
6 guardian ad litem.

Agent and
guardian.
1742-3, 29, § 3.
1752-3, 13, § 4.
1760-1, 13, § 2.
1783, 36, § 15.
1817, 190, § 25.
R. S. 103, § 54.
1830, 164, § 1.

1877, 158, § 2. G. S. 136, §§ 52, 53. 11 Mass. 507.
P. S. 178, §§ 52, 53, 62.

1 SECTION 37. The court shall by warrant appoint three or five
2 disinterested commissioners to make the partition who, before en-
3 tering upon their duties, shall be sworn to faithfully and impartially
4 execute the warrant and shall, except as herein otherwise provided,
5 proceed as if appointed by the superior court.

Commission-
ers.
1742-3, 29, § 1.
1752-3, 13, § 1.
1783, 36, § 12.
1817, 190, §§ 24,
27.
R. S. 103, § 51.
G. S. 136, § 49.

P. S. 178, § 49.

1 SECTION 38. If the land lies in different counties, the judge
2 may issue a separate warrant and appoint different commissioners
3 for each county; and the partition shall be made of the land in
4 each county as if there was no other land to be divided.

If land lies in
different coun-
ties.
R. S. 103, § 52.
G. S. 136, § 50.
P. S. 178, § 50.

1 SECTION 39. If partition is made upon the application of an
2 heir or a person holding under him it shall be of all the land which
3 descended from the ancestor which any party interested requires to
4 have included; and if made upon the application of a devisee or
5 person holding under him, it shall be of all the land held by the
6 applicant jointly or in common with others holding under the tes-
7 tator which he or any other devisee so requires.

What shall be
included in
partition.
R. S. 103, § 55.
G. S. 136, § 54.
P. S. 178, § 54.

1 SECTION 40. Upon such partition the court may set off to the
2 petitioner his share and leave the residue of the land for the per-
3 sons entitled thereto, subject to a future partition; or it may set
4 off to the persons entitled to said residue their respective shares
5 therein. If two or more of such persons consent to hold their
6 shares undivided such shares may be so set off.

Residue to be
divided, un-
less.
R. S. 103, § 56.
G. S. 136, § 55.
P. S. 178, § 55.
1885, 293.

1 SECTION 41. If a part of the land cannot be divided without
2 great inconvenience to the owners or is of greater value than the
3 share of any party or if all the land cannot be divided without such
4 inconvenience, the whole or any part thereof may be set off to any
5 one or more of the parties, upon payment by him or them to any
6 one or more of the others of such amounts of money as the com-
7 missioners may award to make the partition just and equal.

Partition of
land indivis-
ible.
1692-3, 14, § 1.
1783, 36, §§ 6, 15.
1817, 190, §§ 24,
29.
R. S. 103, § 57.
1838, 28.
G. S. 136, §§ 56,
58.
P. S. 178, § 56.

1 SECTION 42. The expenses and charges of the proceedings shall
2 be allowed by the court and paid by all the parties interested in
3 proportion to their respective interests, and the court may issue
4 execution therefor.

P. S. 178, § 58. 11 Allen, 187. 133 Mass. 413.

—costs, how
paid.
1752-3, 13, § 2.
1783, 36, § 14.
1817, 190, § 30.
R. S. 103, § 60.
G. S. 136, § 59.

1 SECTION 43. The court shall not make partition if it finds that
2 the shares of the respective parties are in dispute or are uncertain
3 by reason of depending upon the construction or effect of a devise

—if shares are
uncertain.
1742-3, 29, § 2.
1752-3, 13, § 3.
1783, 36, § 13.

1817, 190, § 28.
R. S. 103, § 61.
G. S. 136, § 60.

or conveyance or upon other questions which the court considers 4
should be determined by another tribunal. 5

P. S. 178, § 59.

11 Allen, 187.

159 Mass. 471.

Partition of
estate of de-
ceased from
that of co-
tenant.

1752-3, 13, § 2.
1760-1, 13, § 1.
1783, 36, § 13.
1817, 190, § 25.
1820, 54, § 1.
R. S. 103, §§ 64,
65.
G. S. 136, §§ 61,
62.
P. S. 178, §§ 60,
61.

SECTION 44. If a part of the land of the deceased lies in com- 1
mon and undivided with that of another person, the probate court 2
may, before making partition among those claiming under the de- 3
ceased, cause the land of the deceased to be set off from the part 4
held by such cotenant. A notice of the intended partition, con- 5
taining a description of the land to be divided and a statement of the 6
share claimed to belong to the estate of the deceased and of the 7
time and place appointed for a hearing, shall be served by deliv- 8
ering to the cotenant an attested copy, or by leaving such copy at 9
the place of his abode in this commonwealth fourteen days at least 10
before the time appointed for the hearing. 11

Effect of par-
tition.

1817, 190, § 26.
R. S. 103, §§ 68,
69.
G. S. 136, §§ 64,
65.
1881, 180.
P. S. 178, § 63.
1882, 6, § 2.
11 Allen, 26.
12 Allen, 600.

SECTION 45. The partition, when finally confirmed and estab- 1
lished, shall be conclusive on all the heirs and devisees of the 2
deceased, and all persons claiming under them; and on all other 3
persons interested in the land who appeared and answered in the 4
case or assented in writing to the proposed partition or upon whom 5
notice of the petition was served, personally or by publication, as 6
before provided or who waived notice, or for whom an agent was 7
appointed, and upon all persons claiming under them or any of 8
them. All other persons may pursue their legal remedies for re- 9
covering the land, or any part thereof, and for obtaining partition 10
of the same, as if the proceedings in the probate court had not 11
been had. 12

GENERAL PROVISIONS.

Jurisdiction
retained, when.

R. S. 103, § 72.
G. S. 136, § 70.
P. S. 178, § 64.
16 Mass. 167.
11 Allen, 187.

SECTION 46. When proceedings for obtaining partition are 1
lawfully commenced in either of the courts mentioned in this chap- 2
ter, the court in which they are so commenced shall retain jurisdic- 3
tion of the case. 4

Sale of land.

1870, 257.
1871, 111, § 1.
1877, 158, § 1.
P. S. 178, §§ 65,
66.
1894, 104.
140 Mass. 82.
162 Mass. 385.

SECTION 47. In any case of partition, the court may, at the 1
time of appointing commissioners, or subsequently by agreement 2
of parties, or at any time after notice to all persons interested, 3
order the commissioners to sell and convey the whole or any part 4
of the land which cannot be advantageously divided, upon such 5
terms and conditions and with such securities for the proceeds of 6
such sale as the court may order, and to distribute and pay over 7
the proceeds of the sale in such manner as to make the partition 8
just and equal. If the court orders such sale before the commis- 9
sioners are appointed, it may appoint one commissioner to make 10
such sale, conveyance and division of its proceeds. Such sale shall 11
be made by public auction, after like notice as is required for the 12
sale of land by an administrator, and the evidence thereof may be 13
perpetuated in like manner by returns filed with the clerk or register 14
of the court in which the proceedings are had. The conveyance 15
shall be conclusive against all parties to the proceedings for parti- 16
tion and those claiming under them. The provisions of section 17
nineteen of chapter one hundred and forty-eight shall apply to such 18
sales. 19

1 SECTION 48. If a distributive share of the money arising from
 2 such sale remains unpaid at the time of confirming the proceedings
 3 or of establishing the partition, the commissioners shall deposit it
 4 in the name of the judge of probate for the county in which the
 5 proceedings are had in such savings bank or other like institution
 6 as the court may order, to accumulate for the persons entitled
 7 thereto. The deposit shall be subject to the provisions of section
 8 twenty-three of chapter one hundred and fifty.

Disposal of
 proceeds un-
 claimed.
 1871, 111, § 2.
 P. S. 178, § 67.

1 SECTION 49. If it appears that an estate for life or for years in
 2 any part of the land divided belongs to one person and the remainder
 3 thereon to another person, the probate court of the county in which
 4 the proceedings are pending may upon petition of any party inter-
 5 ested therein appoint a trustee to receive, hold, manage and invest any
 6 distributive share of the money arising from the partition to which
 7 such persons may be entitled. The annual income of such share
 8 shall be paid to the life tenant or tenant for years for the period
 9 such estate might have continued, and the principal after the ter-
 10 mination of such estate shall be paid to the remainderman when
 11 ascertained. The trustee shall, before entering upon the duties of
 12 his trust, give to the judge of probate a bond with sufficient surety
 13 and in such penal sum as the judge may order, conditioned for the
 14 faithful performance of his duties, and, upon breach of the condi-
 15 tion, an action may, by order of the probate court, be brought for
 16 the use of the persons interested in the trust property as upon a
 17 bond of an administrator.

Appointment
 of trustee.
 1887, 286.

1 SECTION 50. The existence of a lease of the whole or a part of
 2 the land to be divided shall not prevent a partition under the pro-
 3 visions of this chapter; but the rights of the lessee shall not be
 4 prejudiced thereby.

Lease not to
 prevent parti-
 tion.
 1853, 410, § 1.
 G. S. 136, § 67.

P. S. 178, § 68.

6 Cush. 472.

150 Mass. 85.

1 SECTION 51. The fact that a tenant in common is, alone or
 2 jointly with others, a trustee, attorney or guardian of another ten-
 3 ant shall not prevent a partition under the provisions of this chapter.

Trusteeship,
 etc., not to pre-
 vent partition.
 1853, 410, § 2.
 G. S. 136, § 68.

P. S. 178, § 69.

9 Cush. 405.

1 SECTION 52. If remainders or other estates in the land to be
 2 divided are devised or limited to or in trust for persons not in being
 3 at the time of the application for partition, notice setting forth the
 4 origin and nature of the remainder or interest so devised or limited
 5 shall be given as provided in sections five and six to the persons
 6 who may be parents of such persons not in being, and the court
 7 shall appoint a person to appear and act as the next friend of such
 8 persons not in being in all proceedings relative to the partition;
 9 the cost of whose appearance and services, including the compen-
 10 sation of his counsel to be determined by the court, shall be paid
 11 by the persons who apply for partition, and execution may be
 12 issued therefor in the name of the person appointed. The partition
 13 made in such case shall be conclusive upon all persons to whom
 14 such estate or remainder is devised or limited as if they had been
 15 in being and had appeared and answered or had assented to the
 16 partition.

If persons not
 in being are
 interested.
 1850, 249.
 1853, 257.
 1858, 137.
 G. S. 136, § 69.
 P. S. 178, § 70.
 109 Mass. 513.

Payment or
security if
money
awarded.
1850, 239.
G. S. 136, § 71.
P. S. 178, § 71.
16 Mass. 122.
7 Pick. 209.

SECTION 53. If money is awarded by the commissioners to make the partition just and equal, the partition shall not be established by the court until all the money is paid to the parties who are entitled thereto, or secured to their satisfaction or that of the court before which the matter is pending.

8 Met. 365.

3 Gray, 536.

Improvements
made before
new partition.
1742-3, 24, § 4.
1748-9, 12, § 5.
1783, 41, § 3.
R. S. 103, §§ 37,
70.
G. S. 136, § 72.
P. S. 178, § 72.

SECTION 54. If after a first partition improvements have been made on a part of the land which by a new partition is taken from the share of the party who made the improvements, he shall be entitled to compensation therefor, which shall be determined and awarded by the commissioners and paid by the party to whom such part of the land is assigned on the new partition, and the court may issue an execution therefor.

— by person
evicted.
R. S. 103, § 71.
G. S. 136, § 73.
P. S. 178, § 73.

SECTION 55. A person who holds land under a partition made under the provisions of this chapter shall, in case of an eviction, be entitled to compensation for improvements made thereon, as provided in chapter one hundred and seventy-nine.

Return may be
set aside.
R. S. 103, §§ 30,
59.
G. S. 136, § 74.
P. S. 178, § 74.
H Allen, 187.

SECTION 56. The court may in all cases set aside the return of the commissioners and commit the case anew to the same or to other commissioners, with the same powers as those originally appointed.

152 Mass. 137.

Record of
return.
1742-3, 24, § 1;
29, § 1.
1748-9, 12, § 1.
1752-3, 13, § 1.
1783, 41, § 1.
1817, 190, § 26.
1820, 54, § 2.

SECTION 57. The return of the commissioners, when accepted, shall remain in the office of the clerk or register, as the case may be; and a copy of the return, certified by the clerk or register, shall be recorded in the registry of deeds for each county or district in which the land lies.

R. S. 103, § 59.

1847, 170.

G. S. 136, § 75.

P. S. 178, § 75.

1888, 346, § 3

DIVISION OF WATER RIGHTS.

Division of in-
corporeal
hereditaments.
1854, 74.
G. S. 136, § 77.
P. S. 178, § 76.
7 Cush. 361.
4 Gray, 486.
10 Gray, 14.

SECTION 58. Joint tenants or tenants in common of a mill privilege, water right or other incorporeal hereditament may be compelled to divide the same, either by suit in equity in the superior court or in the manner hereinbefore provided for the division of land. In the latter case, the commissioners appointed to make partition shall set forth in their return the best method of setting off to the several parties their respective shares, and thereupon the court may make all such orders and decrees as might be made in equity.

Same subject.
1859, 128.
G. S. 136, § 78.
P. S. 178, § 77.

SECTION 59. Under the provisions of the preceding section, partition may be made of the water of a natural stream, not navigable, the banks of which are owned by different riparian proprietors.

CHAPTER 185.

OF WASTE AND TRESPASS.

Action of
waste.
1700-1, 22, § 5.
1783, 40, § 3.

SECTION 1. If a tenant in dower, by the curtesy, for life or for years commits or suffers waste on the land so held, the person having the next immediate estate of inheritance may have an action

4 of waste against such tenant to recover the place wasted and the
5 amount of the damage, and such action shall be subject to the
6 provisions of law relative to trial by jury. An heir may bring
7 such action for waste done in the lifetime of his ancestor.

7 Pick. 152.

8 Pick. 309.

138 Mass. 472.

152 Mass. 561.

R. S. 60, § 15;
105, §§ 1-3.
G. S. 140, § 14;
138, §§ 1-3.
P. S. 124, § 16;
179, §§ 1, 2.
5 Pick. 192.

1 SECTION 2. A person who has the next immediate estate of in-
2 heritance, or a remainder or reversion in fee simple or fee tail after
3 an intervening estate for life, or who has a remainder or reversion
4 for life or for years, may have an action of tort in the nature of
5 waste to recover the amount of the damage against the tenants
6 named in the preceding section.

Action of tort
for waste.
R. S. 105, §§ 4, 5.
G. S. 138, §§ 4, 5.
P. S. 179, §§ 3, 4.
3 Pick. 263.
10 Allen, 460.

1 SECTION 3. If such action of tort was commenced in the lifetime
2 of the tenant, it may be prosecuted against his executor or admin-
3 istrator or it may be commenced against the executor or adminis-
4 trator of the tenant for waste committed or suffered in the tenant's
5 lifetime.

— may be
prosecuted
against
executor, etc.
R. S. 105, § 6.
G. S. 138, § 6.
P. S. 179, § 5.

1 SECTION 4. A joint tenant or tenant in common of undivided
2 land who cuts down, destroys or carries away any trees, timber,
3 wood or underwood standing or lying on such land, or who digs up
4 or carries away any stone, ore or other valuable thing found there,
5 or who commits any other waste, without first giving thirty days'
6 notice in writing under his hand to all other persons interested
7 therein or to their respective agents or attorneys of his intention
8 to enter upon and improve the land, or who does any of said acts
9 during the pendency of a petition or other proceeding for the par-
10 tition of the land shall forfeit three times the amount of the damages
11 assessed therefor.

Joint tenant,
etc., liable for
triple dam-
ages.
1727, 18, § 1.
1737-8, 8, § 2.
1783, 52, § 1.
1785, 62, § 1.
R. S. 105, § 7.
G. S. 138, § 7.
P. S. 179, § 6.
1 Met. 206.
140 Mass. 31.
145 Mass. 494.

1 SECTION 5. Such damages may be recovered in an action of tort
2 by one or more of the other cotenants, without naming any one
3 except the plaintiff, one-half to the use of the cotenants who
4 associate themselves with the plaintiff in bringing the action, and
5 the other half to their use and that of all the other cotenants except
6 the defendant, to be divided among them in each class in propor-
7 tion to the value of their respective interests in the land.

Such damages,
how recovered.
1727, 18, § 1.
1737-8, 8, § 2.
1783, 52, § 1.
1785, 62, § 1.
R. S. 105, § 8.
G. S. 138, § 8.
P. S. 179, § 7.
22 Pick. 495.
6 Gray, 339.

1 SECTION 6. If, during the pendency of an action for the recovery
2 of land, the tenant or person in possession, with knowledge thereof,
3 commits waste, the demandant, if he recovers judgment, may after-
4 ward recover in an action of tort three times the amount of the
5 damages assessed therefor.

P. S. 179, § 8.

2 Cush. 401.

Waste during
pendency of
action.
1727, 18, § 2.
1795, 75, § 3.
R. S. 105, § 9.
G. S. 138, § 9.

1 SECTION 7. A person who without license wilfully cuts down,
2 carries away, girdles or otherwise destroys any trees, timber, wood
3 or underwood on the land of another shall be liable to the owner in
4 an action of tort for three times the amount of the damages assessed
5 therefor; but if it is found that the defendant had good reason to
6 believe that the land on which the trespass was committed was his
7 own or that he was otherwise lawfully authorized to do the acts
8 complained of, he shall be liable for single damages only.

Liability for
wilfully cut-
ting trees, etc.
1608, 7, § 2.
1723-4, 10, § 1.
1726-7, 3, § 1.
1727, 8, § 1.
1817, 173.
R. S. 105, §§ 10,
11.
G. S. 138, § 10.
P. S. 179, § 9.
110 Mass. 280.
114 Mass. 443.

Involuntary
trespass.
1786, 52, § 2.
R. S. 105, §§ 12,
13.
G. S. 138, §§ 11,
12.
P. S. 179, §§ 10,
11.
6 Met. 261.
16 Gray, 285.

SECTION 8. A trespasser, if the trespass was casual and involuntary, may, before an action is commenced, tender the damages and, upon action brought, disclaim title and allege the tender and that the trespass was casual and involuntary; and if it is found that the allegations are true and if he has deposited with the court the amount of his tender at the time of filing his answer and the damages assessed are not more than the amount tendered, he shall recover his costs. Such tender may, subject to the same provisions, be made after the action has been commenced with like effect, if it covers the costs to the time of tender.

Injunction to
stay waste by
person whose
land is
attached, etc.
1740-1, 14.
1829, 121.
R. S. 105, §§ 17,
18.
1851, 233, § 71.
1852, 312, § 54.
1856, 278.
G. S. 138, §§ 15-
17.
P. S. 179, §§ 12-
14.

SECTION 9. If a person whose land is attached commits any act of waste thereon or threatens or makes preparations so to do or if a real action is brought to foreclose a mortgage or for possession thereunder or for the recovery of land and any waste, or act in the nature of waste, on the land has been committed or threatened by the tenant or by any one who claims under him or acts by his permission, the court in which the action is pending shall, upon motion of the plaintiff or demandant, have jurisdiction in equity to enjoin such waste or act. In such case the court may require the plaintiff or demandant to give bond in such sum as it orders to the adverse party, with sufficient sureties, conditioned that he will, if the injunction is dissolved, pay all damages which may arise from the issuing thereof.

CHAPTER 186.

OF ACTIONS FOR PRIVATE NUISANCES.

Judgment for
abatement of
nuisance.
1828, 137, § 6.
R. S. 106, §§ 1, 2.
G. S. 139, § 1.
P. S. 180, § 1.
11 Pick. 452.
7 Allen, 431.
150 Mass. 482.

SECTION 1. If the plaintiff prevails in an action of tort for a nuisance, the court may, in addition to the judgment for damages and costs, enter judgment that the nuisance be abated and removed and may issue an execution for the damages and costs and a separate warrant to the proper officer, requiring him to abate and remove the nuisance at the expense of the defendant in like manner as public and common nuisances are abated and removed.

Stay of war-
rant.
R. S. 106, § 3.
G. S. 139, § 2.
P. S. 180, § 2.

SECTION 2. The court may, upon motion of the defendant, order a stay of such warrant for not more than six months, to give him opportunity to remove the nuisance, upon his undertaking so to do within the time ordered.

Second action.
R. S. 106, § 4.
G. S. 139, § 3.
P. S. 180, § 3.

SECTION 3. If the plaintiff recovers judgment in a second action for the continuance or repetition of the same nuisance, whether there was in the former action a judgment for abatement and removal or not, he shall be entitled as of right to a judgment for abatement and removal and to a warrant as hereinbefore provided.

Expense of
abatement,
how recovered,
etc.
1786, 81, § 6.
R. S. 106, § 5.
G. S. 139, § 4.
P. S. 180, § 4.

SECTION 4. The expense of abatement and removal shall be collected by the officer in the manner in which damages and costs are collected upon execution, except that the materials of buildings, fences or other things so removed may be sold by the officer as goods are sold on execution for the payment of debts. The officer

6 shall apply the proceeds of the sale to defray the expense of the
7 removal and shall upon demand pay over any balance to the de-
8 fendant. If the proceeds are not sufficient to defray the expenses,
9 he shall collect the residue from the defendant.

1 SECTION 5. The superior court may in an action of tort for a
2 nuisance pending therein enjoin such nuisance as in equity.

G. S. 139, § 6.

P. S. 180, § 6.

Injunction to
stay nuisance.
R. S. 106, § 8.

CHAPTER 187.

OF THE FORECLOSURE AND REDEMPTION OF MORTGAGES.

SECTIONS 1-10. — Foreclosure by Entry or Action.

SECTIONS 11-17. — Foreclosure by Sale.

SECTIONS 18-34. — Redemption.

SECTIONS 35, 36. — General Provisions.

SECTIONS 37-40. — Mortgages to the Commonwealth.

FORECLOSURE BY ENTRY OR ACTION.

1 SECTION 1. A mortgagee may, after a breach of the condition of
2 a mortgage of land, recover possession of the land mortgaged by an
3 open and peaceable entry on the land, if not opposed by the mort-
4 gator or other person claiming it, or by action as hereinafter pro-
5 vided; and such possession so obtained, if continued peaceably for
6 three years, shall forever foreclose the right of redemption.

16 Gray, 149.

102 Mass. 298.

121 Mass. 139.

157 Mass. 272.

3 Allen, 324.

103 Mass. 475.

131 Mass. 464.

165 Mass. 123.

8 Allen, 161, 466.

110 Mass. 311.

139 Mass. 506.

170 Mass. 120.

Foreclosure by
entry or action.
1785, 22, § 2.
R. S. 107, § 1.
G. S. 140, § 1.
P. S. 181, § 1.
7 Cush. 605.
10 Cush. 99, 163.
5 Gray, 318.
6 Gray, 128.
9 Gray, 63, 98.

1 SECTION 2. If an entry for breach of condition is made without
2 a judgment, a memorandum of the entry shall be made on the
3 mortgage deed and signed by the mortgagor or by the person
4 claiming under him, or a certificate, under oath, of two competent
5 witnesses to prove the entry shall be made. Such memorandum or
6 certificate shall within thirty days after the entry, except as pro-
7 vided in section sixty-two of chapter one hundred and twenty-eight,
8 be recorded in the registry of deeds for the county or district in
9 which the land lies, with a note of reference, if the mortgage is
10 recorded in the same registry, from each record to the other.
11 Unless such record is made, the entry shall not be effectual for the
12 purposes mentioned in the preceding section.

Record of cer-
tificate of
entry.
R. S. 107, § 2.
G. S. 140, § 2.
P. S. 181, § 2.
10 Met. 344.
4 Cush. 172.
10 Cush. 163.
5 Gray, 318.
11 Gray, 478.
16 Gray, 561.
8 Allen, 161.
9 Allen, 530.
100 Mass. 108.
109 Mass. 230.
131 Mass. 345.
145 Mass. 224.
165 Mass. 359.

1 SECTION 3. The mortgagee in an action for possession may
2 declare on his own seisin, stating that it is in mortgage; and if the
3 court finds upon verdict or otherwise that the plaintiff is entitled
4 to the possession of the land for breach of condition, it shall upon
5 motion of either party, except as provided in the following section,
6 award the conditional judgment hereinafter mentioned.

9 Allen, 69.

11 Allen, 39.

122 Mass. 135.

131 Mass. 179, 464.

Declaration
and judgment.
1698, 22, § 1.
1785, 22, § 1.
R. S. 107, § 3.
1852, 312, § 2,
cl. 10.
G. S. 140, § 3.
P. S. 181, § 3.
7 Mass. 354.
10 Met. 172.
2 Cush. 374.

1 SECTION 4. Unless the defendant is the mortgagor or his as-
2 signee, or entitled to hold or claim the land under the mortgagor

Conditional
judgment.
R. S. 107, § 4.

G. S. 140, § 4.
P. S. 181, § 4.

or his assignee, he shall not redeem the land nor have a conditional judgment rendered, except with the consent of the plaintiff, but the action shall be conducted like a writ of entry, and in all cases the judgment for the plaintiff may be entered for possession as at common law, unless one or the other of the parties moves for the conditional judgment.

Conditional judgment, form of.
1698, 22, § 1.
1785, 22, § 1.
R. S. 107, § 5.
G. S. 140, § 5.
P. S. 181, § 5.
7 Met. 576.
11 Met. 384.
5 Gray, 423.
11 Gray, 271.
12 Gray, 60.

SECTION 5. If the conditional judgment is to be entered, the court shall determine the amount due to the plaintiff on the mortgage, and shall enter judgment that if the defendant within two months after the judgment pays to the plaintiff such amount with interest and the costs, the mortgage shall be void, and the defendant shall hold the land discharged thereof; otherwise, that the plaintiff shall have execution for possession and for costs.

9 Allen, 69.
10 Allen, 76.

102 Mass. 475.
114 Mass. 360.

118 Mass. 497.
123 Mass. 100, 441.

140 Mass. 49.

Same subject.
R. S. 107, § 6.
G. S. 140, § 6.
P. S. 181, § 6.
11 Met. 384.
9 Allen, 69.

SECTION 6. If the condition of the mortgage is not for the payment of money, or if a part only of the money, the payment of which is secured by the mortgage, is due, the court shall vary the terms of the judgment as the case may require, but shall award execution as before provided unless the defendant within two months after the judgment performs the conditions thereof.

Discharge of mortgage if execution satisfied.
1848, 144, § 2.
G. S. 140, § 35.
P. S. 181, § 7.

SECTION 7. If, after an execution on a judgment for possession has been levied, the amount due on the mortgage and the costs are paid in full, the mortgagee, his exeentor, administrator or assigns shall, at the expense of the mortgagor, enter on the margin of the record of the execution an acknowledgment of satisfaction or make to the mortgagor a deed of release, which shall be recorded with notes of reference to the execution discharged thereby.

Entry of action, against and by whom.
1788, 51, § 1.
R. S. 107, §§ 7, 8.
G. S. 140, §§ 7, 8.
P. S. 181, §§ 7, 8.
17 Pick. 118.
12 Met. 154.
13 Gray, 198, 506.
15 Gray, 461.

SECTION 8. The entry may be made or the action brought by an assignee of the mortgagee. The action for possession may be brought like a writ of entry against the tenant of the freehold, and shall be conducted as if brought by the original mortgagee. The mortgagor may be joined therein as a defendant irrespective of his estate in the land; but if he has no estate in the land and makes no defence to the action, he shall not be liable for costs.

16 Gray, 485.

131 Mass. 464.

Entry before breach.
R. S. 107, § 9.
G. S. 140, § 9.
P. S. 181, § 10.
3 Mass. 138.
16 Mass. 39.
11 Met. 458.
1 Gray, 512.

SECTION 9. The provisions of this chapter shall not prevent a mortgagee or a person claiming under him from entering on the land or from recovering possession thereof before breach of the condition of the mortgage, if there is no agreement to the contrary; but if the debt is afterward paid or the mortgage redeemed, the amount of the clear rents and profits from the time of the entry shall be accounted for and deducted from the amount due on the mortgage.

Foreclosure and redemption if entry before breach.
R. S. 107, §§ 10-12.
G. S. 140, §§ 10-12.
P. S. 181, §§ 11-13.

SECTION 10. A mortgagee, or a person claiming under him, in possession as provided in the preceding section may, after breach of condition, make a new formal entry for breach of condition, or bring an action, as provided in section one, with the same effect as if he were not in possession; or he may foreclose the right of

6 redemption by giving after breach of condition to the mortgagor, 12 Mass. 513.
 7 or the person claiming under him, a notice in writing that he will 13 Mass. 309.
 8 thenceforward hold the land for the purpose of foreclosure and 6 Cush. 91.
 9 causing a certificate in proof thereof to be recorded within thirty
 10 days after such notice as provided in the case of an original entry.
 11 If such notice is given and recorded the three years limited for
 12 redemption shall run from the date of the giving of the notice.

FORECLOSURE BY SALE.

1 SECTION 11. If a conditional judgment has been entered upon Order for
 2 a mortgage which contains a power of sale, the court shall, instead sale.
 3 of issuing a writ of possession, at the request of the plaintiff make 1854, 377, § 1.
 4 an order that the property be sold pursuant to such power. The G. S. 140, § 38.
 5 plaintiff shall thereupon execute the power and do all things re- P. S. 181, § 14.
 6 quired by it or by the court.

1 SECTION 12. The person selling shall, within ten days after the Sale confirmed
 2 sale, file in the clerk's office a report under oath of the sale and of or set aside.
 3 his doings, and the court may confirm the sale or set it aside and 1854, 377, § 2.
 4 order a re-sale. Any person interested may appear or be sum- G. S. 140, § 40.
 5 moned, and the order of the court confirming the sale shall be P. S. 181, § 15.
 6 conclusive evidence against all persons that the power of sale was
 7 duly executed.

1 SECTION 13. Unless the defendant is seised in fee simple in Parties in-
 2 possession of the whole equity of redemption of the land demanded, terested in
 3 an order for a sale shall not be made until all parties interested equity to be
 4 the equity of redemption and whose estate or interest therein summoned.
 5 would be affected by such sale, including a person having a right or 1854, 377, § 3.
 6 possibility of curtesy or dower, have been summoned to appear. G. S. 140, § 41.
 P. S. 181, § 16.

1 SECTION 14. The mortgagee or a person who has his estate in Sale without
 2 the land mortgaged or a person authorized by the power of sale action or order.
 3 may, upon a breach of the condition and without action brought, 1857, 229, § 1.
 4 do all the acts authorized or required by the power; but no sale G. S. 140, § 42.
 5 under such power shall be effectual to foreclose a mortgage, unless, 1877, 215.
 6 previous to such sale, notice thereof has been published once in P. S. 181, § 17.
 7 each of three successive weeks, the first publication to be not less 1882, 75.
 8 than twenty-one days before the day of sale, in a newspaper, if 151 Mass. 291.
 9 any, published in the city or town in which the land lies; other- 165 Mass. 273.
 10 wise, in a newspaper published in such county.

1 SECTION 15. The person selling shall, within thirty days after Record of
 2 the sale, cause a copy of the notice and his affidavit stating his acts affidavit
 3 fully and particularly to be recorded in the registry of deeds for evidence.
 4 the county or district in which the land lies, with a note of refer- 1857, 229, § 1.
 5 ence thereto on the margin of the record of the mortgage deed, if G. S. 140, §§ 42,
 6 the mortgage is recorded in the same registry. If the affidavit 43.
 7 shows that he has in all respects complied with the requirements P. S. 181, § 18.
 8 of the power of sale and of the statute, the affidavit, or a certified 5 Allen, 319.
 9 copy of the record thereof, shall be admitted as evidence that the 106 Mass. 310.
 10 power of sale was duly executed. 115 Mass. 89.
 117 Mass. 366.

Sale a bar to dower and curtesy.
1854, 377, § 1.
1857, 229, § 2.
G. S. 140, § 44.
P. S. 181, § 19.

SECTION 16. If the mortgagor had at the time of the execution of the mortgage no husband or wife or if, being married, the husband or wife joined in the deed in token of his or her release of curtesy or dower, the sale in either of the modes aforesaid shall bar all right and possibility of curtesy or dower in the land.

Effect of conveyance by mortgagor.
G. S. 140, § 39.
P. S. 181, § 20.

SECTION 17. A sale or transfer by the mortgagor shall not impair or annul any right or power of attorney given in the mortgage to the mortgagee to sell or transfer the land as attorney or agent of the mortgagor.

REDEMPTION.

Who may redeem, and when.
1638, 22, §§ 4, 5.
1712-13, 8, § 2.
1785, 22, § 2.
1798, 77, § 1.
R. S. 107, § 13.
G. S. 140, § 13.
P. S. 181, § 21.
22 Pick. 401.
6 Gray, 128.
13 Allen, 60.

SECTION 18. The mortgagor or a person claiming or holding under him may, after breach of condition, redeem the land mortgaged, unless the mortgagee, or a person claiming or holding under him, has obtained possession of the land for a breach of condition and has continued that possession for three years, or unless the land has been sold pursuant to a power of sale contained in the mortgage deed.

105 Mass. 564.

112 Mass. 352.

148 Mass. 540.

159 Mass. 356.

Debt to be paid or tendered.
1638, 22, § 4.
1785, 22, § 2.
1798, 77, § 1.
R. S. 107, § 14.
G. S. 140, § 14.
P. S. 181, § 22.
5 Pick. 259.
5 Met. 95.
7 Gray, 148.
139 Mass. 407.

SECTION 19. The person who is entitled to redeem shall pay or tender to the mortgagee, or to the person claiming or holding under him, the whole amount then due and payable on the mortgage, and shall perform or tender performance of every other condition contained therein; and if there has been an action to recover the land he shall pay or tender the costs of such action if unpaid.

Account of mortgagee.
1638, 22, § 4.
1785, 22, § 2.
1798, 77, § 1.
R. S. 107, § 15.
G. S. 140, § 15.
P. S. 181, § 23.
5 Pick. 259.
10 Pick. 398.
4 Met. 246, 498.
7 Met. 157.
2 Cush. 400.
7 Cush. 220.
5 Gray, 423.

SECTION 20. If the mortgagee or a person claiming or holding under him has had possession of the land, he shall account for the rents and profits, and be allowed for all amounts expended in reasonable repairs and improvements, for all lawful taxes and assessments paid and for all other necessary expenses in the care and management of the land. A balance of such account, if due from him, shall be deducted from the debt due on the mortgage; if due to him, shall be added to the debt, and shall be paid or tendered as such.

6 Gray, 556.

5 Allen, 78.

104 Mass. 400.

126 Mass. 146.

14 Gray, 132.

12 Allen, 120.

114 Mass. 498.

139 Mass. 77.

4 Allen, 538.

100 Mass. 270.

124 Mass. 242.

148 Mass. 300.

Tender and suit by mortgagor.
1638, 22, § 4.
1798, 77, § 2.
1821, 85, § 1.
R. S. 107, §§ 16, 17.
1857, 105, § 2.
G. S. 140, §§ 16-18.
P. S. 181, §§ 24-26.
97 Mass. 459.
143 Mass. 49.

SECTION 21. The tender may be made before the expiration of the three years limited for redemption, and before or after entry for breach of condition, and before a sale pursuant to a power contained in the mortgage; but if the mortgagee or the person claiming or holding under him does not accept the tender and discharge the mortgage, the tender shall not prevent the foreclosure unless, within one year after the tender is made the mortgagor or the person claiming or holding under him commences a suit for redemption and when he commences his suit pays to the clerk of the court the amount tendered for the use of the party who is entitled thereto.

Suit without previous tender.

SECTION 22. The person who is entitled to redeem may, before the expiration of the three years limited for the redemption, and

3 before or after an entry for breach of condition, and before a sale
 4 pursuant to a power contained in the mortgage, commence a suit
 5 for redemption without a previous tender, and may in such suit
 6 offer to pay such amount as shall be found due from him, or to
 7 perform such other condition as the case may require; but a mort-
 8 gagee who has published a notice of sale prior to the commence-
 9 ment of such suit may proceed with said sale unless the amount
 10 due is paid into court or the sale is enjoined.

1821, 85, § 1.
 1833, 201, § 1.
 R. S. 107, § 18.
 G. S. 140, § 19.
 P. S. 181, § 27.
 1888, 433.
 108 Mass. 254.
 143 Mass. 49.
 148 Mass. 300,
 540.

1 SECTION 23. The court may determine, by a reference to a
 2 master or otherwise, whether any and what amount due on the
 3 mortgage is not in dispute, and may by an interlocutory decree
 4 order it to be paid to the mortgagee, or for his use to the clerk of
 5 the court.

143 Mass. 144.

158 Mass. 375.

Order for pay-
 ment of
 amount not in
 dispute.
 1837, 105, § 1.
 G. S. 140, § 20.
 P. S. 181, § 28.

1 SECTION 24. The court may award costs in the suit for redemp-
 2 tion to either party; but if the suit is brought without a previous
 3 tender and it is found that the condition of the mortgage has not
 4 been performed, the plaintiff shall pay the costs of suit, unless the
 5 court finds that the defendant has unreasonably refused or neglected,
 6 when requested, to render a just and true account of the money
 7 due upon the mortgage and of the rents and profits and the amounts
 8 paid for taxes, repairs, improvements and other necessary expenses,
 9 or that he otherwise by his default prevented the plaintiff from
 10 performing or tendering performance of the condition before the
 11 commencement of the suit.

Costs.
 1821, 85, § 1.
 1833, 201, § 2.
 R. S. 107, § 19.
 G. S. 140, § 21.
 P. S. 181, § 29.
 2 Pick. 540, 546.
 5 Pick. 259.
 6 Gray, 356.
 14 Gray, 132.
 16 Gray, 566.

1 SECTION 25. If the suit was commenced before the expiration
 2 of the three years limited for redemption, and before or after entry
 3 for breach of condition, the plaintiff shall, although the tender
 4 alleged is found to be insufficient, be entitled to a decree for redemp-
 5 tion as if no previous tender had been alleged.

Insufficient
 tender.
 R. S. 107, § 20.
 G. S. 140, § 22.
 P. S. 181, § 30.

1 SECTION 26. A suit for redemption shall be brought in the
 2 county in which the land or any part thereof lies. If the bill is in-
 3 serted in a writ and the writ or a copy thereof, attested by the
 4 officer, with or without the bill but with a description of the land
 5 sought to be redeemed is deposited, within three days after the day
 6 on which the service is made, in the office of the clerk of the court
 7 to which the writ is returnable, the service shall be the commence-
 8 ment of the suit; otherwise, the depositing of such copy or writ
 9 shall be the commencement of the suit.

Jurisdiction
 and commence-
 ment of suit.
 1838, 22, § 2.
 1788, 77, § 1.
 R. S. 107, § 21.
 1853, 316.
 G. S. 140, §§ 23,
 24.
 P. S. 181, §§ 31,
 32.
 7 Met. 157.
 9 Gray, 208.

1 SECTION 27. If the court finds that the plaintiff is entitled to
 2 redeem, it shall determine what amount is due on the mortgage
 3 or what condition the plaintiff is bound to perform for the redemp-
 4 tion of the land, and shall enter a decree that, upon the payment of
 5 such amount or the performance of such condition within such time
 6 as it shall order, the plaintiff shall have an execution for possession
 7 of the land and shall hold it discharged of the mortgage.

Form of
 decree.
 1698, 22, § 4.
 1798, 77, § 2.
 R. S. 107, § 23.
 G. S. 140, § 25.
 P. S. 181, § 33.
 5 Pick. 259.
 21 Pick. 355.
 7 Cush. 220.
 1 Allen, 145.
 10 Allen, 74.

110 Mass. 57.

122 Mass. 76.

1 SECTION 28. If the court finds that the mortgagee has not unrea-
 2 sonably neglected or refused to render a true account of the rents

Interest.
 1850, 21.
 G. S. 140, § 26.
 P. S. 181, § 34.

and profits of the land mortgaged, it may award to him the balance found due on the mortgage, with interest thereon at a rate of not more than twelve per cent a year from the expiration of three years after the entry to the date of the decree.

Execution.
1698, 22, § 4.
1798, 77, § 2.
R. S. 107, § 24.
G. S. 140, § 27.
P. S. 181, § 35.

SECTION 29. The court may at the same time decree that, if the defendant neglects or refuses to accept the money or other act required by the decree to be paid or performed, the money shall be left for his use with the clerk of the court, or such other act done as the case may require; and the plaintiff, after having performed all acts required of him by the decree of the court, may have an execution for possession of the land.

Judgment for balance.
1818, 98, § 2.
R. S. 107, § 25.
G. S. 140, § 28.
P. S. 181, § 36.
6 Mass. 264.
143 Mass. 410.

SECTION 30. If the court finds that the defendant has received from the rents and profits of the land or otherwise more than is due on the mortgage, it shall award judgment and execution against him for such amount as is due to the plaintiff; and if there are several defendants, such judgment and execution may be awarded against them, either jointly or severally, for the amounts received by them or any of them, respectively.

Deductions from money tendered and paid into court.
1818, 98, § 3.
R. S. 107, § 26.
G. S. 140, § 29.
P. S. 181, § 37.

SECTION 31. The court may order the amount found due the plaintiff for rents and profits or costs, if any, to be deducted from the amount found due the defendant, to whom the balance only shall be paid from any money tendered or brought into court, and the residue thereof, if any, shall be restored to the plaintiff.

New parties.
1818, 98, § 1.
R. S. 107, § 28.
G. S. 140, § 31.
P. S. 181, § 38.

SECTION 32. If a person other than the parties to a suit for redemption is interested therein, the court may, upon terms, cause him to be made a party and may order a subpoena to be issued and served on him to appear and answer.

Death of owner of equity.
R. S. 107, §§ 30, 31.
G. S. 140, §§ 32, 33.
P. S. 181, §§ 39, 40.

SECTION 33. If the owner of an equity of redemption dies, his heirs, devisees, executor or administrator may make a tender or commence or prosecute a suit for redemption which the deceased might have made, commenced or prosecuted.

104 Mass. 277.

117 Mass. 408.

170 Mass. 120.

Tender to guardian.
R. S. 107, § 32.
G. S. 140, § 34.

SECTION 34. A tender may be made to a guardian, who may, upon satisfaction, execute a release of the mortgage.

P. S. 181, § 41.

12 Mass. 16.

GENERAL PROVISIONS.

Foreclosure, how opened.
R. S. 107, § 33.
G. S. 140, § 36.
P. S. 181, § 42.
1896, 203.
136 Mass. 463.

SECTION 35. If, after the foreclosure of a mortgage not containing a power of sale, the person who is entitled to the debt recovers judgment for any part of it on the ground that the value of the land mortgaged at the time of the foreclosure was less than the amount due, such recovery shall open the foreclosure, and the person entitled may redeem the land although the three years limited therefor have expired, if suit for redemption is brought within one year after the recovery of such judgment.

1 SECTION 36. If a mortgagee or a person claiming or holding
 2 under him receives from the rents and profits of the land or upon a
 3 tender made to him, or in any other manner, more than is due on
 4 the mortgage and no suit for redemption is brought against him,
 5 the mortgagor or other person who is entitled to such excess may
 6 recover it in an action of contract.

Action for
 excess of rents
 and profits, etc.
 1818, 98, § 3.
 R. S. 107, § 27.
 G. S. 140, § 30.
 P. S. 181, § 43.
 9 Pick. 171.

MORTGAGES TO THE COMMONWEALTH.

1 SECTION 37. If a mortgage is made or assigned to the common-
 2 wealth, the treasurer and receiver general may demand and receive
 3 the money due, and upon payment shall make and acknowledge a
 4 discharge.

Payment and
 discharge.
 1804, 103, § 1.
 R. S. 107, § 35.
 G. S. 140, § 45.
 P. S. 181, § 45.

1 SECTION 38. If the condition of such mortgage is not duly per-
 2 formed, the treasurer and receiver general may cause an entry for
 3 breach of condition to be made in the name and behalf of the com-
 4 monwealth by himself or by a person whom he appoints or he may
 5 bring an action in the name of the commonwealth to recover pos-
 6 session of the land mortgaged: and possession obtained by entry
 7 or by action shall have the same effect in foreclosing the right of
 8 redemption as a similar possession by any other mortgagee.

Foreclosure.
 R. S. 107, § 36.
 G. S. 140, § 46.
 P. S. 181, § 46.

1 SECTION 39. The mortgagor or his assigns may redeem the
 2 land in like manner and upon like terms as if it were held by
 3 any other mortgagee, and the payment or performance of the con-
 4 dition shall be made or tendered to the treasurer and receiver
 5 general.

Redemption.
 1804, 103, § 2.
 R. S. 107, § 37.
 G. S. 140, § 47.
 P. S. 181, § 47.

1 SECTION 40. If the treasurer and receiver general and the per-
 2 son who applies to redeem the mortgage do not agree upon the
 3 amount due, the person so applying may bring in the supreme
 4 judicial court or the superior court, for the county of Suffolk, a
 5 suit in equity against the commonwealth for the redemption. The
 6 process shall be served on the treasurer and receiver general, who
 7 shall appear and answer in behalf of the commonwealth; and like
 8 proceedings shall be had and like judgment rendered as are pro-
 9 vided in the case of other mortgages, except that the treasurer
 10 and receiver general shall accept any payment due to the com-
 11 monwealth, and upon the receipt thereof, or upon the performance
 12 of such other condition as the court orders, shall discharge the
 13 mortgage in like manner as when the debt is paid without suit.

— suit for.
 1804, 103, § 2.
 R. S. 107, §§ 38,
 39.
 G. S. 140, § 48.
 P. S. 181, § 48.
 127 Mass. 43.

CHAPTER 188.

OF INFORMATIONS BY THE COMMONWEALTH.

1 SECTION 1. If a person unlawfully enters upon or holds land
 2 which belongs to the commonwealth, it may be recovered upon an
 3 information filed by the attorney general or by a district attorney
 4 in the superior court in any county, describing the land and setting
 5 forth the title and claim of the commonwealth thereto. A summons

Information
 for unlawful
 entry, etc.
 1791, 13, § 2.
 1798, 43, § 1.
 R. S. 108, §§ 1, 2.
 G. S. 141, § 1.
 P. S. 182, § 1.
 9 Gray, 451.

returnable in the county in which the land lies shall thereupon issue 6
to the defendants. 7

Order of gen-
eral court in
certain cases.
1791, 13, § 1.
1796, 4.
1798, 43, § 1.
R. S. 108, §§ 6, 7.
G. S. 141, §§ 3, 4.
P. S. 182, §§ 2, 3.

SECTION 2. If the title of the commonwealth is founded on a 1
forfeiture for the breach of a condition in a grant or conveyance 2
made by the commonwealth or by the province or colony of Massa- 3
chusetts Bay, no action for the recovery of such land shall be com- 4
menced unless by an order of the general court; but in all other 5
cases the attorney general or district attorney may prosecute an 6
action therefor if he has good reason to believe that the claim of 7
the commonwealth can be established. 8

Service of sum-
mons, etc.
1791, 13, § 1.
R. S. 108, § 3.
G. S. 141, § 2.

SECTION 3. The service of the summons and all other proceed- 1
ings shall, except as otherwise provided, be substantially the same 2
as in real actions. 3
P. S. 182, § 4.

Public notice.
1791, 13, § 2.
R. S. 108, § 8.
G. S. 141, § 5.
P. S. 182, § 5.

SECTION 4. If, in case of a supposed escheat, no person appears 1
as the heir of the person last seised, or if in any case there is reason 2
to suppose that there is a person who claims an estate or interest in 3
the land, whose name is unknown, who is absent from the common- 4
wealth or who cannot be found therein to be served with process, 5
the court shall, in addition to any other service, order the substance 6
of the information with the order of the court thereon to be pub- 7
lished once in each of three successive weeks in a newspaper 8
designated by it, the first publication to be ninety days at least 9
before the time appointed for the appearance of the parties. 10

Who may ap-
pear as defend-
ants. Costs.
R. S. 108, §§ 9,
10.
G. S. 141, §§ 6, 7.
P. S. 182, §§ 6, 7.

SECTION 5. A person who claims an estate or interest in the 1
land, although not named in the information nor served with 2
process, may appear and answer thereto; but a defendant who is 3
not named shall not recover costs against the commonwealth, unless 4
it appears that he has an estate or interest in the land, although the 5
commonwealth fails to establish its claim thereto. If there are 6
several defendants, the court may award costs for or against any 7
one, in like manner as if he were the sole defendant. 8

Rents and
improvements.
R. S. 108, § 11.
G. S. 141, § 8.
P. S. 182, § 8.

SECTION 6. If the commonwealth prevails, the defendant shall 1
be chargeable for the rents and profits and be entitled to an allow- 2
ance for improvements as provided in chapter one hundred and 3
seventy-nine. 4

Common-
wealth seised
without execu-
tion.
1791, 13, § 3.

SECTION 7. The commonwealth shall be actually seised and 1
possessed of the land as soon as judgment is rendered in its favor, 2
without a writ of possession. R. S. 108, § 5. G. S. 141, § 9. P. S. 182, § 9. 3

Conclusiveness
of judgment.
1791, 13, § 3.
R. S. 108, § 12.
G. S. 141, § 10.
P. S. 182, § 10.

SECTION 8. The judgment shall be conclusive between the com- 1
monwealth and the defendants who appear and answer, and against 2
every person named as a defendant upon whom the summons has 3
been duly served within the commonwealth and against all persons 4
who claim under such defendants. 5

Writ of entry
by person not
concluded.
R. S. 108, § 13.
G. S. 141, § 11.
P. S. 182, § 11.

SECTION 9. A person who is not concluded by a judgment for 1
the commonwealth according to the provisions of the preceding 2
section may, until his claim is barred by the law for the limitation 3

4 of real actions or otherwise, bring a writ of entry to recover the
5 land from the commonwealth or from any person who may then
6 hold under it. He may deny and disprove any facts alleged and
7 proved in the first action and allege and prove any other facts in sup-
8 port of his claim and shall, if it appears that he is entitled to the
9 land, have judgment and execution therefor.

1 SECTION 10. If the commonwealth continues seised of the land
2 at the time when such new action is commenced, such action shall
3 be brought against the tenant or occupant of the land, and, in addition
4 to the service on him, a copy of the original writ or summons shall
5 be left with the attorney general or district attorney fourteen days
6 at least before the return day. If the commonwealth has granted
7 away the land, the action shall be brought against the tenant of the
8 freehold. In either case it shall be conducted and disposed of as if
9 no such information had been filed.

Against whom
such writ shall
be brought.
R. S. 108, § 14.
G. S. 141, § 12.
P. S. 182, § 12.

1 SECTION 11. If the demandant recovers judgment, he shall be
2 entitled to the rents and profits and chargeable for improvements
3 as provided in chapter one hundred and seventy-nine, although the
4 land has not been held and possessed for six years under the adverse
5 title.

Rents and
improvements.
1798, 43, § 2.
R. S. 108, § 15.
G. S. 141, § 13.
P. S. 182, § 13.

1 SECTION 12. Costs shall be awarded and taxed for the prevail-
2 ing party. If judgment is in favor of the commonwealth, an exe-
3 cution for costs shall issue; if it is in favor of the defendant, the
4 costs shall be paid by the commonwealth.

Costs.
1791, 13.
R. S. 108, § 4.
G. S. 141, § 14.
P. S. 182, § 14.

TITLE IV.

OF CERTAIN WRITS AND PROCEEDINGS IN SPECIAL CASES.

- CHAPTER 189. — Of the Trustee Process.
 CHAPTER 190. — Of the Replevin of Property.
 CHAPTER 191. — Of Habeas Corpus, Personal Replevin and Personal Liberty.
 CHAPTER 192. — Of Audita Querela, Certiorari, Mandamus and Quo Warranto.
 CHAPTER 193. — Of the Writ of Error, of Vacating Judgment and of the Writ of Review.
 CHAPTER 194. — Of Reference to Arbitration.
 CHAPTER 195. — Of the Improvement of Meadows and Swamps.
 CHAPTER 196. — Of Mills, Dams and Reservoirs.
 CHAPTER 197. — Of Liens on Buildings and Land.
 CHAPTER 198. — Of Mortgages, Conditional Sales and Pledges of, and Liens upon, Personal Property.
 CHAPTER 199. — Of Recognizances for Debts.
 CHAPTER 200. — Of Seizing and Libelling Forfeited Property.
 CHAPTER 201. — Of Claims against the Commonwealth.

CHAPTER 189.

OF THE TRUSTEE PROCESS.

- SECTIONS 1-8. — Commencement and Service of Process.
 SECTIONS 9-18. — Appearance and Answer of Trustee.
 SECTIONS 19-31. — Property liable to Attachment by the Trustee Process.
 SECTIONS 32-34. — Adverse Claimants.
 SECTIONS 35-38. — Proceedings if Action Pending against Trustee.
 SECTIONS 39-44. — Judgment and Execution.
 SECTIONS 45-49. — Scire Facias against Trustee.
 SECTIONS 50-54. — Death of Parties.
 SECTIONS 55, 56. — Proceedings if an Executor is Charged as Trustee.
 SECTIONS 57-64. — Proceedings if Trustee has Specific Property.
 SECTIONS 65, 66. — Dissolution of Attachment by the Trustee Process.
 SECTIONS 67-82. — Costs.

COMMENCEMENT AND SERVICE OF PROCESS.

Actions which may be commenced by trustee process.
 1708-9, 7, § 1.
 1728-9, 3, § 1.
 1738-9, 15, § 1.
 1753-4, 28.
 1758-9, 10.

SECTION 1. All personal actions, except actions of tort for malicious prosecution, for slander or libel or for assault and battery and actions of replevin, may be commenced by the trustee process, and any person or corporation may be summoned as trustee of the defendant therein; but a person who is not an inhabitant of the commonwealth, or a corporation which is not established under its

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- 7 laws, shall not be so summoned unless he or it has a usual place of
 8 business in the commonwealth.
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|----------------------|---------------|----------------|--------------------|
| 1835, 141, § 1. | 16 Mass. 299. | 10 Allen, 463. | 150 Mass. 560. |
| 1839, 158. | 3 Pick. 302. | 11 Allen, 357. | 151 Mass. 501. |
| G. S. 142, §§ 1, 75. | 15 Pick. 445. | 121 Mass. 380. | 152 Mass. 64. |
| 1870, 194. | 13 Met. 471. | 129 Mass. 444. | 161 Mass. 287. |
| P. S. 183, § 1. | 9 Allen, 570. | 134 Mass. 347. | 176 Mass. 48, 113. |

1794, 65, § 1.
 1832, 164, § 1.
 1833, 171.

- 1 SECTION 2. If, in an action commenced in the supreme judicial
 2 court or the superior court by the trustee process, all the persons
 3 named in the writ as trustees dwell or have usual places of business
 4 in one county, the writ shall be returnable in such county; other-
 5 wise, it may be returnable in any county in which any one of them
 6 dwells or has a usual place of business.
- | | | | | |
|--------------|---------------|----------------|---------------|----------------|
| 7 Gray, 282. | 1 Allen, 286. | 11 Allen, 357. | 12 Cush. 284. | 150 Mass. 560. |
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Venue of
 action.
 1794, 65, § 1.
 R. S. 109, § 7.
 1852, 287.
 G. S. 142, § 4.
 P. S. 183, § 3.
 14 Mass. 132.
 22 Pick. 250.
 4 Cush. 588.
 6 Cush. 560.

- 1 SECTION 3. If, in an action, suit or proceeding commenced in the
 2 supreme judicial court or the superior court by the trustee process,
 3 the court finds that the trustee was made a party for the purpose of
 4 giving to the court jurisdiction of the cause in the county in which
 5 the trustee dwells or has a usual place of business, and that neither
 6 the plaintiff nor the principal defendant dwells or has a usual place of
 7 business therein, it may, upon motion of the defendant at any time
 8 before the trial, order the cause and all the papers relating thereto
 9 to be transferred to a county in which some one of the principal
 10 parties dwells or has a usual place of business upon terms. The
 11 cause shall thereupon be entered and prosecuted in the same court
 12 for that county as if originally returnable therein, and all prior
 13 proceedings otherwise regularly taken shall thereafter be valid.

— change of.
 1893, 285.
 4 Mass. 81.

- 1 SECTION 4. No person shall be held to answer as a trustee in an
 2 action before a police, district or municipal court, except as provided
 3 in section fifty-nine of chapter one hundred and sixty, or before
 4 a trial justice, in any county other than that in which he dwells or
 5 has a usual place of business; and if a person who is summoned
 6 as trustee before such a court or justice is out of the county at the
 7 time of the service of the original writ upon him, and does not
 8 return before the final judgment in the action, he shall not be charge-
 9 able as trustee.

— in inferior
 courts.
 R. S. 109, § 72.
 G. S. 142, § 78.
 1874, 271, § 9.
 P. S. 183, § 4.
 1893, 396, § 13.
 1894, 398, § 1;
 431.

- 1 SECTION 5. An attachment of the goods and estate of the defend-
 2 ant in his own hands and possession, if any, upon a trustee writ
 3 shall be made in the manner provided in chapter one hundred and
 4 sixty-seven and the writ shall be further served upon each of the
 5 trustees and upon the defendant in the manner provided for the
 6 service of an original summons without an attachment.
- | | | | |
|--------------|--------------|----------------|----------------|
| 13 Met. 471. | 8 Cush. 518. | 119 Mass. 142. | 129 Mass. 444. |
|--------------|--------------|----------------|----------------|

Service of
 trustee writs.
 1708-9, 7, § 2.
 1728-9, 3, § 2.
 1758-9, 13, § 2.
 1758-9, 10, § 2.
 1794, 65, § 1.
 R. S. 109, § 8.
 1852, 287.
 G. S. 142, § 5.
 P. S. 183, § 6.
 6 Mass. 60.

- 1 SECTION 6. A trustee writ issued by a police, district or munic-
 2 ipal court or trial justice shall be returnable not more than thirty
 3 days after the date thereof and shall be served seven days at least
 4 before the return day. If co-partners are so summoned as trustees
 5 and the partnership is properly described in the writ, service of
 6 the writ upon one partner shall be sufficient.

Provision for
 trustee writs
 issued from
 police courts,
 etc.
 1878, 260, § 1.
 P. S. 183, § 7.
 1887, 33.
 1892, 148.
 1893, 396, § 17.
 1894, 398, § 2.

- 1 SECTION 7. The plaintiff may at any time insert the names of
 2 other trustees in the writ and cause the writ to be served upon
 3 them: and, after service upon a trustee, he may cause the writ to

New trustees,
 successive ser-
 vices.
 1798, 5, § 2.
 R. S. 109, § 9.

G. S. 142, § 6. be again served upon him in like manner and with the same effect 4
 P. S. 183, § 8. as if it had not been previously served. A writ which is served 5
 22 Pick. 250. upon a trustee after service upon the defendant shall be again served 6
 142 Mass. 447. upon the defendant. 7

Proceedings if trustees are discharged. SECTION 8. The plaintiff may proceed in the action against the 1
 1794, 65, § 4. defendant if the writ has been served upon him or if he has had 2
 1798, 5, § 1. notice of the action or has appeared and answered thereto, although 3
 R. S. 109, § 10. all the trustees have been discharged. P. S. 183, § 9. 1 Pick. 389. 4
 G. S. 142, § 7. 13 Met. 471. 6 Cush. 560. 5 Gray, 309. 119 Mass. 142. 139 Mass. 471.

APPEARANCE AND ANSWER OF TRUSTEE.

Answer of trustee, filing. SECTION 9. A person who is summoned as trustee in the su- 1
 1851, 233, § 73. preme judicial court or the superior court shall appear and file his 2
 1852, 312, § 56. answer within ten days, or in a police, district or municipal court 3
 G. S. 142, § 8. or before a trial justice, within three days, after the return day of 4
 P. S. 183, §§ 10, 11. the writ, unless further time is allowed by the court or justice. 5
 1885, 384, § 9. The answer shall disclose plainly, fully and particularly what goods, 6
 12 Pick. 167. effects or credits, if any, of the defendant were in the hands or 7
 4 Cush. 267. possession of the trustee when the writ was served upon him. 8
 12 Gray, 431.
 14 Gray, 453.
 10 Allen, 160.
 97 Mass. 110.

—to be under oath, except. SECTION 10. Such answer shall be signed and sworn to by the 1
 1794, 65, § 3. trustee, except that in a police, district or municipal court or before 2
 R. S. 109, § 11. a trial justice it may be signed by the trustee or his attorney, with- 3
 1851, 233, § 73. out being sworn to, if the alleged trustee declares that he had not 4
 1852, 312, § 56. in his hands or possession at the time of the service of the writ upon 5
 G. S. 142, §§ 8, 79. him any goods, effects or credits of the defendant, and submits 6
 P. S. 183, §§ 11, 13. himself thereupon to examination under oath. 7
 157 Mass. 309.

Interrogatories. SECTION 11. The plaintiff may from time to time examine the 1
 1817, 148, § 2. alleged trustee upon written interrogatories filed in the clerk's 2
 R. S. 109, § 12. office or with the justice. The answers thereto shall be signed, 3
 1851, 233, § 74. sworn to and filed in the clerk's office or with the justice within 4
 1852, 312, § 57. seven days after notice to the trustee or his attorney of the filing of 5
 G. S. 142, §§ 9, 80. the interrogatories, unless the court or justice otherwise orders. If 6
 P. S. 183, §§ 12, 14. the answers are not so filed, the court or justice may make such 7
 21 Pick. 21. order as the case may require. 8
 3 Met. 297.
 8 Cush. 518.
 131 Mass. 231.
 136 Mass. 407.

Discharge of trustee. SECTION 12. If it appears by the answer of the alleged trustee 1
 1794, 65, § 3. that at the time of the service of the writ upon him he had not in 2
 R. S. 109, § 11. his hands or possession any goods, effects or credits of the defend- 3
 G. S. 142, § 79. ant, and the plaintiff declines to examine him, or if upon examina- 4
 P. S. 183, § 13. tion his answer appears to be true, he shall be discharged. 5
 9 Cush. 539.

Admission of funds by trustees. SECTION 13. A person who is summoned as trustee and who 1
 R. S. 109, § 13. admits that he has in his hands any goods, effects or credits of the 2
 1851, 233, § 73. defendant, or who wishes to submit the question to the court or jus- 3
 1852, 312, § 57. tice whether he is chargeable upon the facts, may make a statement 4
 G. S. 142, § 81. in writing, under oath, of such facts as are material. The plaintiff 5
 P. S. 183, § 15. may then examine him, under oath, upon written interrogatories, 6
 and the statement, interrogatories and answers shall be filed with 7
 the court or justice. 8

1 SECTION 14. A corporation which is summoned as trustee may
2 appear and answer by its cashier, treasurer, secretary or such other
3 officer as it shall appoint or as the court or justice shall require to
4 attend for that purpose, and his answer and examination, under
5 oath, shall be received as the answer and examination of the corpo-
6 ration.

Answer by
corporations.
1832, 164, § 1.
R. S. 169, § 6.
G. S. 142, § 10.
P. S. 183, § 16.

1 SECTION 15. The answer and statements of a trustee, under oath,
2 shall be considered as true in determining how far he is chargeable;
3 but either party may allege and prove any facts, not stated or denied
4 by the trustee, which may be material in determining such question.

Answers of
trustees to be
taken as true.
1817, 148, § 1.
R. S. 169, § 15.
G. S. 142, § 11.
P. S. 183, § 17.
2 Met. 376.

4 Cush. 314.
9 Cush. 530.
10 Cush. 104.

97 Mass. 110.
99 Mass. 311, 469.
107 Mass. 116.

111 Mass. 134.
126 Mass. 535.
127 Mass. 139.

140 Mass. 271.
145 Mass. 155.
166 Mass. 152.

1 SECTION 16. A question of fact which arises upon such addi-
2 tional allegations may be tried and determined by the court or
3 justice, or it may be submitted to a jury in such manner as the
4 court orders.

R. S. 169, § 16.

G. S. 142, § 12.

P. S. 183, § 18.

Trial of ques-
tions of fact
arising on
answer.
1817, 148, § 1.

1 SECTION 17. A person who, being duly summoned as a trustee,
2 neglects to appear and answer as hereinbefore provided shall be
3 defaulted and adjudged a trustee.

G. S. 142, § 13.

P. S. 183, § 19.

1851, 233, § 73.
10 Mass. 25.

1852, 312, § 56.
6 Allen, 584.

Default of
trustee.
1758-9, 10, § 4.
1784, 65, § 5.
R. S. 169, § 14.

1 SECTION 18. If a person who is summoned as trustee, his
2 executor or administrator, or if an officer, agent or other person
3 who appears and answers for a corporation which is so summoned,
4 knowingly and wilfully swears falsely in his answer or upon his
5 examination, he shall be liable in an action of tort to the plaintiff
6 in the trustee process, or to his executor or administrator, for the
7 full amount due on the judgment recovered therein, with interest,
8 to be paid out of his own goods and estate.

Penalty for
false answer
by trustee.
1784, 65, § 9.
R. S. 169, § 78.
G. S. 142, § 14.
P. S. 183, § 20.
1 Cush. 457.
8 Cush. 199.
4 Allen, 391.

PROPERTY LIABLE TO ATTACHMENT BY THE TRUSTEE PROCESS.

1 SECTION 19. The goods, effects or credits of the defendant
2 which have been intrusted to, or deposited in the hands or pos-
3 session of, a person who is summoned as his trustee shall, except
4 as hereinafter provided, be attached and held to respond to the
5 final judgment, as if they had been attached upon an original writ
6 of attachment.

Effect of
attachment by
trustee process.
1788-9, 7, § 1.
1788-9, 8, § 1.
1784-9, 6.
1788-9, 10, § 1.
1788, 16, § 4.
1794, 65, § 1.

R. S. 169, § 4.

G. S. 142, § 21.

P. S. 183, § 21.
4 Mass. 102.
5 Pick. 28, 178.
8 Pick. 286.
9 Pick. 561.
4 Cush. 314.

7 Cush. 487.
6 Gray, 116.
16 Gray, 70.
6 Allen, 572.
9 Allen, 570.
99 Mass. 302.

104 Mass. 164.
120 Mass. 86.
122 Mass. 206.
124 Mass. 38, 366.
129 Mass. 577.
143 Mass. 167.

151 Mass. 501.
152 Mass. 64.
153 Mass. 14.
164 Mass. 127.
172 Mass. 133.
174 Mass. 208.

1 SECTION 20. Debts, legacies, goods, effects or credits due from
2 or in the hands of an executor or administrator as such may be at-
3 tached in his hands by the trustee process.

Liability of
executors, etc.,
as trustees.
R. S. 169, § 62.
G. S. 142, § 22.

P. S. 183, § 22.
19 Pick. 354.
20 Pick. 563.
1 Met. 476.

3 Met. 507.
10 Met. 459.
2 Cush. 111.
7 Cush. 406.

2 Gray, 251.
6 Allen, 397.
104 Mass. 275.
122 Mass. 206.

136 Mass. 501.
150 Mass. 234.
151 Mass. 501.

1 SECTION 21. After a dividend on the estate of an insolvent
2 debtor has been declared, it may, unless it is upon a claim for

— of assignees
of insolvent
estates.

1858, 40.	wages which would have been exempt from attachment by the	3
G. S. 142, § 23.	trustee process in the hands of the insolvent debtor, be so attached	4
P. S. 183, § 23.	in the hands of the assignee.	5
6 Cush. 558.		

Liability of receivers.	SECTION 22. Funds, credits or dividends which are due from	1
1881, 123.	or in the hands of receivers appointed by a court may be so	2
P. S. 183, § 24.	attached after an order has been made for their distribution.	3
115 Mass. 67.		

119 Mass. 157.

Attachment of money, etc., due but not payable.	SECTION 23. Money or any other thing which is due to the	1
R. S. 109, § 34.	defendant absolutely and without any contingency may be so at-	2
G. S. 142, § 24.	tached before it has become payable, but the trustee shall not be	3
P. S. 183, § 25.	compelled to pay or deliver it before the time appointed by the	4
14 Pick. 81.	contract.	5
4 Met. 6.	99 Mass. 550. 131 Mass. 363. 149 Mass. 167.	

Trustee chargeable if conveyance to him fraudulent.	SECTION 24. A person summoned as trustee who has goods,	1
R. S. 109, § 35.	effects or credits of the defendant in his possession which he holds	2
G. S. 142, § 25.	by a conveyance or title which is void as to the creditors of the	3
P. S. 183, § 26.	defendant may be adjudged a trustee, although the defendant could	4
151 Mass. 501.	not maintain an action therefor against him.	5
	172 Mass. 133.	

Mutual demands between defendant and trustee.	SECTION 25. A trustee may retain or deduct from the goods,	1
R. S. 109, §§ 36, 37.	effects or credits in his hands all demands against the defendant of	2
G. S. 142, §§ 26, 27.	which, had he not been summoned as a trustee, he could have	3
P. S. 183, § 27.	availed himself by way of set-off on a trial or by the set-off of	4
16 Mass. 473.	judgments or executions between himself and the defendant, and	5
19 Pick. 20.	he shall be liable for the balance only after all mutual demands,	6
5 Met. 206.	excluding therefrom any claim on either side for unliquidated dam-	7
12 Met. 567.	ages for wrongs or injuries, between him and the defendant have	8
7 Gray, 153.	been adjusted.	9
122 Mass. 296.	132 Mass. 61, 427. 149 Mass. 14.	

Trustee not chargeable for payment before knowledge of service.	SECTION 26. If, after the service of process on the trustee, but	1
R. S. 109, § 5.	before he has knowledge thereof, he makes any payment in good	2
G. S. 142, § 28.	faith or becomes liable to a third person by reason of the goods,	3
P. S. 183, § 28.	effects or credits in his hands, or delivers such goods, effects or	4
3 Met. 301.	credits to the defendant or to any other person who may be entitled	5
5 Cush. 544.	thereto, he shall be allowed therefor in the same manner as if the	6
4 Allen, 485.	payment or delivery had been made, or as if the liability had been	7
98 Mass. 142.	incurred, before the service of the writ.	8
132 Met. 61.		
156 Mass. 1.		

Wages exempt from attachment, when.	SECTION 27. If wages for the personal labor and services of a	1
1842, 91.	defendant are attached for a debt or claim, other than for necessities	2
1855, 300, § 2.	which have been furnished to him or to his family, an amount not	3
1857, 200, § 2.	exceeding twenty dollars shall be reserved in the hands of the	4
G. S. 142, § 29.	trustee and shall be exempt from such attachment. If such wages	5
1878, 260, § 3.	are attached on a claim for such necessities and the writ contains a	6
P. S. 183, § 30.	statement to that effect, an amount not exceeding ten dollars shall	7
1900, 191.	be so reserved; but if the writ contains no such statement, an	8
14 Gray, 487.	amount not exceeding twenty dollars shall be so reserved.	9
5 Allen, 210.		
6 Allen, 572.		
7 Allen, 264.		
9 Allen, 106.		
142 Mass. 447.		
160 Mass. 32.		

Tender and offer of judgment.	SECTION 28. If, after wages for personal labor or services have	1
1878, 260, §§ 4, 5.	been attached and before the entry of the writ, the defendant tenders	2
P. S. 183, § 31.	to the plaintiff or to his attorney the whole amount due and recover-	3

4 able in the action and the fees of the officer for serving the writ, the
5 plaintiff shall recover no costs, except the fees of the officer; and
6 if the defendant is defaulted without an appearance or if he files an
7 offer of judgment on the return day of the writ in accordance with
8 section seventy-two of chapter one hundred and seventy-three, and
9 the plaintiff accepts such offer or fails to secure more than the
10 amount thereof and of the interest thereon from its date, the
11 plaintiff shall recover no costs, except the entry fee and the officer's
12 fees.

1 SECTION 29. Whoever wilfully causes, or aids and abets in caus-
2 ing, such wages for personal services as are exempt from attach-
3 ment to be attached by the trustee process for the purpose of
4 unlawfully hindering or delaying their payment to the person to
5 whom they belong shall, on complaint of the person injured thereby
6 or of the guardian or other person having the lawful custody of any
7 such person who is incompetent to act, be punished by a fine of not
8 more than fifty dollars to the use of the person injured thereby.

Penalty for attaching wages exempt from attachment. 1878, 260, § 2. P. S. 183, § 32.

1 SECTION 30. If a savings bank is charged as trustee, and the
2 court finds that the answer creates a doubt as to the identity of the
3 defendant, it may require the plaintiff to give bond with surety who
4 shall be approved by the court, conditioned to indemnify such bank
5 from any loss by reason of a payment by it pursuant to the order of
6 the court.

Bond by plaintiff to indemnify savings bank. 1850, 48. G. S. 142, § 30. P. S. 183, § 33. 164 Mass. 124.

1 SECTION 31. No person shall be adjudged a trustee in the fol-
2 lowing cases:

Claims not attachable by trustee process. 1794, 65, § 12. R. S. 109, § 30. 1842, 91. G. S. 142, §§ 29, 31.

3 First, By reason of having drawn, accepted, made or indorsed a
4 negotiable bill, draft, note or other security payable on time and
5 not overdue.

1868, 95.	P. S. 183, §§ 29, 34.	1886, 194.
1890, 289.	2 Mass. 377.	111 Mass. 550.
		151 Mass. 383.

6 Second, By reason of having received or collected money or any
7 other thing as a sheriff or other officer upon an execution or other
8 legal process in favor of the defendant in the trustee process, al-
9 though it may have been demanded of him by the defendant.

10 Third, By reason of having money in his hands as a public
11 officer, for which he is accountable to the defendant merely as such
12 officer.

147 Mass. 92.	153 Mass. 14.	174 Mass. 335.
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3 Mass. 289.
7 Cnsh. 257.
14 Gray, 220.
5 Allen, 94.
130 Mass. 86.

13 Fourth, By reason of money or any other thing due from him to
14 the defendant, unless it is, at the time of the service of the writ upon
15 him, due absolutely and without any contingency.

12 Met. 14.	13 Gray, 200.	117 Mass. 238, 551.	147 Mass. 293.
6 Cnsh. 264, 558.	1 Allen, 394.	131 Mass. 363.	157 Mass. 565.
7 Gray, 153.	99 Mass. 187.	135 Mass. 397.	

4 Mass. 235.
11 Mass. 488.
16 Mass. 341.
6 Pick. 120.
4 Met. 486.

16 Fifth, By reason of a debt due from him upon a judgment, so long
17 as he is liable to an execution thereon.

124 Mass. 98.

3 Mass. 121.
6 Pick. 120.
15 Gray, 532.

18 Sixth, By reason of money or credits due for the wages of the
19 personal labor or services of the wife or minor children of the
20 defendant.

21 Seventh, By reason of money or credits due or accruing to the
22 defendant as wages or lay as a seaman: but the provisions of this
23 clause shall not apply to the wages or lay due or accruing to a fish-
24 erman.

132 Mass. 56.
134 Mass. 277.

ADVERSE CLAIMANTS.

Proceedings if
goods are
claimed by
third person.
1817, 148, § 1.
R. S. 109, §§ 17-
19.
1839, 107, § 19.
G. S. 142, §§ 15-
17.
P. S. 183, §§ 35-
37.
8 Pick. 470.
10 Met. 180.
5 Gray, 50.
7 Gray, 546.
11 Gray, 225.
2 Allen, 124.
6 Allen, 582.
111 Mass. 281,
506, 532.

SECTION 32. If a person who claims, by assignment from the defendant or otherwise, goods, effects or credits in the hands of a supposed trustee enters an appearance, he shall be admitted as a party to the action for the purpose of determining his title to such goods, effects or credits, and may allege and prove any facts which have not been stated nor denied by the supposed trustee. Such allegations shall be tried and determined as provided in section sixteen upon depositions or oral testimony as the court orders. If he does not voluntarily enter an appearance, the court may issue an order of notice to him.

113 Mass. 382.
118 Mass. 406.
123 Mass. 358.

125 Mass. 475.
126 Mass. 536.
127 Mass. 34.

132 Mass. 161.
137 Mass. 339.
143 Mass. 226.

147 Mass. 287.
162 Mass. 524, 562.
169 Mass. 562.

— upon assign-
ment by de-
fendant as
security for
debt.
1865, 43, § 1.
P. S. 183, § 38.
1888, 345.
123 Mass. 283.
131 Mass. 518.
142 Mass. 375.

SECTION 33. If it appears that the claimant holds a valid assignment from the principal defendant only as security for a debt, the court shall, at the request of the plaintiff, ascertain and determine the amount due upon such debt at the time of the service of the writ upon the trustee, and the claimant shall have judgment and execution for the amount so found to be due him and for his costs; and after said judgment and execution have been satisfied, the residue, if any, of the goods, effects or credits in the hands of the trustee shall be subject to be held by the attachment in the trustee process. If judgment by default has been rendered against the trustee and it appears that he has paid over, upon the execution issued on the original judgment, any part of the goods, effects or credits in his hands which are liable to attachment, he shall be liable to the adverse claimant only for the residue in his hands.

Assignment of
future earn-
ings.
1865, 43, §§ 2, 3.
P. S. 183, § 39.
102 Mass. 233,
235.
105 Mass. 442.
110 Mass. 204.
115 Mass. 165.
120 Mass. 94.
121 Mass. 167,
431.

SECTION 34. An assignment of future earnings shall not be valid against a trustee process, unless, before the service of the writ upon the alleged trustee, the assignment has been recorded in the office of the clerk of the city or town in which the assignor resides at the time of such record. Such record shall not affect the rights or liability of the person or corporation from whom such earnings are due, otherwise than is provided in this section.

123 Mass. 353.

124 Mass. 162.

131 Mass. 534.

PROCEEDINGS IF ACTION PENDING AGAINST TRUSTEE.

Proceedings if
action pending
by the
defendant
against the
trustee.
R. S. 109, §§ 31,
32.
G. S. 142, §§ 18,
19.
P. S. 183, § 40.
6 Pick. 120.
97 Mass. 107.
99 Mass. 313.
161 Mass. 109.

SECTION 35. If, while an action is pending, the defendant is summoned in another action as the trustee of the plaintiff, the earlier action may proceed so far as to ascertain by a verdict, award or otherwise the amount due from the defendant, and it shall not be delayed on account of the trustee process, unless the court continues it for judgment until the termination of the trustee process or until the attachment therein is dissolved by the discharge of the trustee, by the satisfaction of the judgment or otherwise. The court may, upon application of the plaintiff in the trustee process, so continue such pending action upon terms.

Defendant not
chargeable,
when.

SECTION 36. If the action is not so continued and judgment is rendered against the defendant, he shall not afterward, so long as he

3 is liable to an execution thereon, be adjudged a trustee on account
4 of the demand so recovered against him.

R. S. 109, § 32.
G. S. 142, § 19.
P. S. 183, § 41.

1 SECTION 37. If, before final judgment in such pending action,
2 the defendant therein is adjudged a trustee in the trustee process,
3 and pays thereon the money demanded in the pending action, or any
4 part thereof, such fact shall be stated on the record of such action,
5 and judgment therein shall be rendered for the costs due to the plain-
6 tiff and for such part of the debt or damages as remains due and
7 unpaid.

Proceedings if
defendant ad-
judged a trust-
ee before
judgment in
such action.
R. S. 109, § 33.
G. S. 142, § 20.
P. S. 183, § 42.
119 Mass. 103.
125 Mass. 319.

1 SECTION 38. If, while an action is pending, the plaintiff is sum-
2 moned as trustee of the defendant on account of a demand which
3 is filed in set-off in such action, such pending action shall be subject
4 to the provisions of the three preceding sections in the same manner
5 and with the same effect as if it were an action brought upon such
6 demand in set-off by the defendant against the plaintiff.

—if claim
against the
trustee is the
subject of a
set-off.
1865, 155.
P. S. 183, § 43.

JUDGMENT AND EXECUTION.

1 SECTION 39. If a person is adjudged a trustee, it shall not be
2 necessary to specify in the judgment the amount for which he is
3 chargeable. P. S. 183, § 44. 11 Gray, 19. 2 Allen, 566. 136 Mass. 407. 162 Mass. 524.

Form of judg-
ment charging
trustee.
R. S. 109, § 42.
G. S. 142, § 32.

1 SECTION 40. If the goods, effects and credits in the hands of a
2 person who has been adjudged a trustee are not demanded of him
3 by force of the execution within thirty days after final judgment,
4 they shall be liable to another attachment, whether made before or
5 after the judgment; or if there has been no such second attachment,
6 they may be recovered by the defendant.

Further attach-
ment of goods,
when.
R. S. 109, §§ 43,
44.
G. S. 142, §§ 33,
34.
P. S. 183, § 45.
6 Gray, 241.

1 SECTION 41. If no such second attachment of the goods, effects
2 and credits has been made, and if no action has been brought
3 therefor by the defendant, and if they have not been paid or deliv-
4 ered to the defendant before they are demanded of the trustee by
5 the officer, the trustee shall be liable to pay and deliver the same,
6 when so demanded, although said thirty days have expired.

Liability of
trustee after
thirty days,
when.
R. S. 109, § 45.
G. S. 142, § 35.
P. S. 183, § 46.
6 Gray, 241.

1 SECTION 42. If the trustee cannot be found in the common-
2 wealth by the officer to whom the execution is committed for service,
3 a copy of the execution left at his dwelling house or at his last and
4 usual place of abode, with a notice to him, indorsed thereon and
5 signed by the officer, that he is required to pay and deliver, toward
6 satisfying the execution, the goods, effects and credits for which he
7 is liable shall be a sufficient demand for all the purposes of the two
8 preceding sections.

Demand on
absent trustee.
R. S. 109, § 46.
G. S. 142, § 36.
P. S. 183, § 47.
173 Mass. 442.

1 SECTION 43. The judgment against a trustee shall acquit and
2 discharge him from all demands by the defendant, his executor or
3 administrator, for all goods, effects and credits paid, delivered or
4 accounted for by the trustee by force of such judgment.

Effect of judg-
ment against
trustee.
1708-9, 7, § 6.
1728-9, 3, § 5.
1748-9, 6.
1758-9, 10, § 7.
1794, 65, § 8.
R. S. 109, § 47.

G. S. 142, § 37.
P. S. 183, § 48.
7 Gray, 269, 505.

13 Gray, 51.
1 Allen, 286.
2 Allen, 123.

99 Mass. 530.
100 Mass. 453.
105 Mass. 340.

116 Mass. 210.
131 Mass. 518.
164 Mass. 124.

Discharge of trustee no bar to action by defendant.
R. S. 109, § 48.
G. S. 142, § 38.

SECTION 44. If a person who is summoned as trustee is discharged, the judgment shall be no bar to an action brought against him by the defendant for the same demand.

P. S. 183, § 49.

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SCIRE FACIAS AGAINST TRUSTEE.

Scire facias against trustee.
1708-9, 7, § 5.
1728-9, 3, § 3.
1748-9, 6.
1758-9, 10, § 5.
1794, 65, §§ 5, 6.
R. S. 109, §§ 38, 61.
G. S. 142, §§ 39, 83.
1878, 260, § 6.
P. S. 183, § 50.
16 Mass. 473.
4 Cush. 420.
9 Cush. 289.
2 Allen, 566.
99 Mass. 530.
122 Mass. 64.
135 Mass. 397.

SECTION 45. If a person who is adjudged a trustee does not, upon demand, pay over to the officer goods, effects or credits sufficient to satisfy the execution and if the execution is not otherwise satisfied, the plaintiff may sue out from the court in which the judgment was rendered a writ of scire facias against him or all, or a separate writ against each, of the trustees, to show cause why judgment and execution should not be awarded against them or him and their or his own goods and estate for the amount remaining unsatisfied on the judgment against the defendant. Such writ may be issued by the court or justice by which the judgment was rendered, although the amount of the debt and costs therein exceeds the jurisdiction of such court or justice.

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Proceedings upon default of trustee on scire facias.
1708-9, 7, § 5.
1728-9, 3, § 3.
1748-9, 6.
1758-9, 10, § 5.
1794, 65, § 7.
R. S. 109, § 39.

SECTION 46. If a trustee, who has been duly served with the scire facias, neglects to appear and answer, he shall be defaulted: and if he did not answer, and was not examined in the original action, judgment shall be rendered against him upon such default for the whole amount which remains unsatisfied on the judgment against the defendant.

G. S. 142, § 40.

P. S. 183, § 51.

151 Mass. 17.

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Same subject.
R. S. 109, § 40.
G. S. 142, § 41.
P. S. 183, § 52.
156 Mass. 166.

SECTION 47. If a trustee who is defaulted on the scire facias has been examined, or has answered and not been examined, in the original action, judgment in the scire facias shall be rendered upon the facts stated upon such examination, or in such answer, respectively, for any part remaining in his hands of the goods, effects or credits for which he was chargeable as a trustee, or for so much thereof as then remains unsatisfied on the original judgment.

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Proceedings upon appearance of trustee.
1794, 65, § 6.
R. S. 109, §§ 41, 42.
G. S. 142, §§ 32, 42.
P. S. 183, § 53.
4 Cush. 431.
10 Gray, 164, 371.
9 Allen, 90.

SECTION 48. If the trustee appears and answers to the scire facias, he may be examined therein; but if he has been examined in the original action, he shall be examined anew only by order of the court. He may prove any matter which may be necessary or proper for his defence in the action on the scire facias. A judgment against a trustee on scire facias shall express the amount for which he is chargeable.

134 Mass. 232.

149 Mass. 49.

111 Mass. 154.

156 Mass. 1.

116 Mass. 299.

173 Mass. 439.

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Limitation of action on scire facias.
1840, 40, § 1.
G. S. 142, § 43.
P. S. 183, § 54.
4 Gray, 343.

SECTION 49. A writ of scire facias shall not be maintained against a person who is adjudged a trustee, unless it is served upon him within two years after judgment in the original action; or if the money or other thing is not payable when the judgment is rendered, unless served upon him within one year after such money or other thing becomes so payable.

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DEATH OF PARTIES.

Death of trustee before judgment.
R. S. 109, § 63.
G. S. 142, § 44.
P. S. 183, § 55.

SECTION 50. If a person who is summoned as trustee in his own right dies before the judgment recovered by the plaintiff has been fully satisfied, the goods, effects and credits in his hands at the time

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4 of the attachment shall remain bound thereby, and his executor or
5 administrator shall be liable therefor as if the writ had been origi-
6 nally served on him.

1 SECTION 51. If a person who is so summoned dies before judg-
2 ment in the original action, his executor or administrator may
3 appear voluntarily or may be cited to appear, as in other cases.
4 The further proceedings shall then be conducted in the same man-
5 ner as if the executor or administrator had been originally sum-
6 moned as a trustee, except that the examination of the deceased, if
7 any has been filed, shall have the same effect as if he were living.

Proceedings.
1794, 65, § 11.
R. S. 109, § 64.
G. S. 142, § 45.
P. S. 183, § 56.

1 SECTION 52. If the executor or administrator does not appear,
2 the plaintiff, instead of suggesting the death of the trustee, may
3 take judgment against him by default or otherwise as if he were
4 living and the executor or administrator shall pay upon the execu-
5 tion the amount which the deceased would have been liable to pay
6 to the defendant, and shall be thereby discharged for the amount so
7 paid. If he does not voluntarily pay the amount in his hands, the
8 plaintiff may proceed against him by a writ of scire facias.

Same subject.
R. S. 109, §§ 65,
66.
G. S. 142, §§ 46,
47.
P. S. 183, §§ 57,
58.
149 Mass. 49.

1 SECTION 53. If a person who is summoned as trustee dies after
2 judgment in the original action, his executor or administrator may
3 pay upon the execution the amount which the deceased would have
4 been liable to pay were he living, and he shall be discharged from
5 all further demands on account thereof in the manner before men-
6 tioned. If he refuses to make such payment, the plaintiff may pro-
7 ceed against him by a writ of scire facias.

Death of trust-
ee after judg-
ment.
1794, 65, § 11.
R. S. 109, § 67.
G. S. 142, § 48.
P. S. 183, § 59.
15 Mass. 473.

1 SECTION 54. If a person, against whom as trustee execution has
2 been issued, is not living at the expiration of thirty days after final
3 judgment in the trustee process, a demand, for the purpose of hold-
4 ing the attachment, may be made upon the executor or administrator
5 of such deceased person at any time within thirty days after his
6 appointment, and shall have the same effect as if made within thirty
7 days after the judgment.

Same subject.
R. S. 109, § 68.
G. S. 142, § 49.
P. S. 183, § 60.

PROCEEDINGS IF AN EXECUTOR IS CHARGED AS TRUSTEE.

1 SECTION 55. If an executor or administrator as such is adjudged
2 a trustee, the execution shall not be served on his own goods or
3 estate nor on his person, and he shall be liable for the amount in his
4 hands only in like manner and to the same extent as he would have
5 been liable to the defendant if there had been no trustee process.

Service of exe-
cution when an
executor or
administrator
is adjudged a
trustee.
R. S. 109, § 69.
G. S. 142, § 50.
P. S. 183, § 61.

149 Mass. 49.

1 SECTION 56. If, after final judgment against an executor or ad-
2 ministrator for a sum certain due from him as trustee, he neglects
3 to pay the same, the original plaintiff in the trustee process shall
4 have the same remedy for recovering the amount, either upon a
5 suggestion of waste or by a suit on the administration bond, as the
6 defendant in the trustee process would have had upon a judgment
7 recovered by himself for the same demand against the executor or
8 administrator.

Remedy on
bond of exec-
utor neglecting
to pay amount
for which he is
charged.
R. S. 109, § 70.
G. S. 142, § 51.
P. S. 183, § 62.

PROCEEDINGS IF TRUSTEE HAS SPECIFIC PROPERTY.

Proceedings if trustee is charged for specific property.
1794, 65, § 10.
R. S. 109, § 22.
G. S. 142, § 52.
P. S. 183, § 63.
7 Cush. 487.
104 Mass. 164.

SECTION 57. If a person is charged as trustee by reason of personal property other than money, which he holds or is bound to deliver to the defendant, he shall deliver it, or so much thereof as may be necessary, to the officer holding the execution, who shall sell the property and apply and account for the proceeds in the same manner as if the property had been taken on execution.

Same subject.
1794, 65, § 10.
R. S. 109, § 23.
G. S. 142, § 53.
P. S. 183, § 64.
6 Mass. 60.
173 Mass. 439.

SECTION 58. The value of any property so delivered shall be ascertained and fixed, as between the trustee and defendant, in like manner and upon the same principles as if it had been delivered to the defendant. Upon the application of either party, the court or justice may, pending the original action or upon the scire facias, determine the value, and make any other order relative to such property and to the delivery thereof as may be necessary or proper to protect the rights of the trustee and of the defendant.

Delivery by trustee of specific property according to contract.
R. S. 109, § 24.
G. S. 142, § 54.
P. S. 183, § 65.
6 Mass. 60.
6 Gray, 320.
104 Mass. 165.

SECTION 59. If a person who is summoned as trustee is bound by contract to deliver specific property to the defendant at a certain time and place within the commonwealth, he shall not be required by reason of the trustee process to deliver it at any other time or place; and he may, notwithstanding such process, tender or deliver it to the person entitled thereto under the contract at the time and place therein mentioned, unless he has been previously adjudged a trustee on account thereof.

Tender by plaintiff of amount for which trustee holds property as security.
1829, 124, § 1.
R. S. 109, § 25.
G. S. 142, § 55.
P. S. 183, § 66.
9 Gray, 46.
11 Allen, 354.

SECTION 60. If the court finds that such property in the hands of a person who is summoned as trustee is mortgaged, pledged or is in any way liable for the payment of a debt to the person so summoned, it may allow the attaching creditor to pay or tender the amount due to the trustee, who shall thereupon deliver the property, in the manner before provided, to the officer who holds the execution.

154 Mass. 34.

173 Mass. 439.

— if held for other purpose than as security.
1829, 124, § 1.
R. S. 109, § 26.
G. S. 142, § 56.
P. S. 183, § 67.
1 Met. 172.

SECTION 61. If the court finds that the property in such case is held for any purpose other than to secure the payment of money and that the contract, condition or other thing to be performed is such that it can be performed by the attaching creditor without damage to the other parties, it may make an order for the performance thereof by him. Upon such performance, or upon a tender, the trustee shall deliver the property in the manner before provided, to the officer who holds the execution.

Disposal of property by officer.
1829, 124, § 2.
R. S. 109, § 27.
G. S. 142, § 57.
P. S. 183, § 68.

SECTION 62. Property which has been received by the officer under the provisions of the two preceding sections shall be sold and disposed of in the same manner as if it had been taken on an execution, except that from the proceeds of the sale the officer shall repay to the attaching creditor the amount paid by him to the trustee for the redemption of the property, with interest thereon, or shall indemnify the creditor for any other act or thing by him done or performed pursuant to the order of the court for the redemption of the property.

1 SECTION 63. The provisions of the preceding sections shall not
 2 prevent the trustee from selling the property in his hands for the
 3 payment of the claim for which it is mortgaged, pledged or other-
 4 wise liable at any time before the amount due to him is paid or
 5 tendered as before mentioned, if such sale would be authorized as
 6 between him and the defendant.

Sale by trustee
 of property
 held as secur-
 ity, etc.
 R. S. 109, § 28.
 G. S. 142, § 58.
 P. S. 183, § 69.

1 SECTION 64. If a trustee refuses or neglects to deliver any
 2 property in his hands when thereunto lawfully required by the
 3 officer who serves the execution, he shall, after deducting the
 4 amount of any lien he has on such property, be liable to the plain-
 5 tiff upon a scire facias. G. S. 142, § 59. P. S. 183, § 70. 173 Mass. 439.

Liability of
 trustee for
 neglect to de-
 liver property
 for which he is
 charged.
 1794, 65, § 6.
 1829, 124, § 1.
 R. S. 109, § 29.

DISSOLUTION OF ATTACHMENT BY THE TRUSTEE PROCESS.

1 SECTION 65. A person who has an interest by assignment or
 2 otherwise in money or credits which have been attached by the
 3 trustee process in an action against another may, at any time before
 4 final judgment, dissolve such attachment or a part thereof by giving
 5 bond, in a sum not exceeding the damages demanded, with sufficient
 6 sureties who shall be approved in writing by the plaintiff or his
 7 attorney, by a master in chancery or by a justice of a court of record,
 8 if the attachment is made within the jurisdiction of such justice,
 9 conditioned to pay to the plaintiff, within thirty days after final
 10 judgment, or after a special judgment entered in accordance with
 11 the provisions of section twenty-five of chapter one hundred and
 12 seventy-seven, the amount for which the trustee may be charged, not
 13 exceeding the value of the property in his hands, or so much thereof
 14 as will satisfy the amount which may be recovered by the plaintiff.
 15 If there are several trustees, such bonds may be made to apply to
 16 one or more. The provisions of sections one hundred and twenty-
 17 one and one hundred and twenty-two of chapter one hundred and
 18 sixty-seven, relative to notice, hearing, fees and the filing of the
 19 bond, shall apply to bonds given under the provisions of this
 20 section.

Dissolution of
 attachment by
 trustee proc-
 ess.
 1877, 97, §§ 1, 2.
 P. S. 183, § 71.
 129 Mass. 589.
 136 Mass. 407.
 156 Mass. 166.

1 SECTION 66. After the filing of such bond, the trustee may deliver
 2 to the person by whom or in whose behalf as principal the bond
 3 was given the money or other thing in his hands, or that part
 4 thereof to which the bond applies, and shall not after such delivery
 5 be liable to the plaintiff therefor, nor shall any execution therefor
 6 issue against him. No action on such bond shall be commenced
 7 after the expiration of six years from the date thereof.

Delivery of
 property by
 trustee.
 1877, 97, § 2.
 P. S. 183, § 72.

COSTS.

1 SECTION 67. If a person who is summoned as a trustee in the
 2 supreme judicial court or the superior court appears and answers
 3 pursuant to the provisions of this chapter, he shall be allowed his
 4 costs for travel and term fees, and such further amount for counsel
 5 fees and other necessary expenses as the court may allow. If he
 6 is so summoned in a police, district or municipal court, or before a
 7 trial justice, he shall be allowed the costs fixed by section twenty-
 8 eight of chapter two hundred and three. If there has been a trial

Costs of trust-
 ee.
 1708-9, 7, § 5.
 1728-9, 3, § 4.
 1748-9, 6.
 1758-9, 10, § 3.
 1794, 65, § 3.
 1829, 128, § 2.
 R. S. 109, § 49.
 G. S. 142, §§ 60,
 82.
 P. S. 183, § 73.
 12 Pick. 407,
 414.

19 Pick. 354.
12 Met. 397.
14 Gray, 453.
15 Gray, 70.
6 Allen, 122.

between the plaintiff and the alleged trustee upon any issue of fact, 9
the court may award costs to either party. 10

99 Mass. 501, 551.

117 Mass. 91.

123 Mass. 319.

10 Allen, 160.
128 Mass. 20.

Costs payable
out of effects,
when.
1829, 128, § 2.
1845, 188.
R. S. 109, § 50.
G. S. 142, § 61.
P. S. 183, § 74.
10 Met. 580.
12 Cush. 131.
11 Gray, 19.
2 Allen, 568.

SECTION 68. If a person who is so summoned is adjudged a trustee, his costs and charges shall be deducted from the goods, effects and credits in his hands, and he shall be chargeable for the balance only to be paid on the execution. If such goods, effects and credits are not of sufficient value to discharge the costs taxed in his favor, he shall have judgment and execution against the plaintiff for the balance of such costs, after deducting the amount disclosed, in the same manner as if he had been discharged.

— payable by
plaintiff, when.
1708-9, 7, § 5.
1728-9, 3, § 4.
1748-9, 6.

SECTION 69. If a person who is so summoned is discharged, he shall have judgment and execution for his costs and charges against the plaintiff.

G. S. 142, § 62.

1758-9, 10, § 3.
P. S. 183, § 75.

1794, 65, § 4.
3 Cush. 341.

R. S. 109, § 51.
11 Cush. 466.

— of person
absent from
common-
wealth.
R. S. 109, § 52.
G. S. 142, § 63.
P. S. 183, § 76.
10 Mass. 25.

SECTION 70. If a person who is so summoned in an action pending in the supreme judicial court or the superior court is out of the commonwealth at the time of the service of the original writ upon him, and appears and answers within ten days after his return, or if he is so summoned in an action pending in a police, district or municipal court or before a trial justice, and appears and answers within three days after his return, he shall be allowed his costs and charges.

— of person
summoned
out of county.
1794, 65, §§ 3, 6.
R. S. 109, § 53.
1852, 287.
G. S. 142, § 64.
P. S. 183, § 77.
12 Pick. 529.

SECTION 71. If a person who is so summoned, does not dwell or have a usual place of business in the county in which the writ is returnable, he shall, if he appears at any time in the original action or upon a scire facias, be allowed his costs and charges, which shall be retained or recovered as before provided.

Liability of
trustee neg-
lecting to ap-
pear.
1794, 65, § 3.
R. S. 109, § 54.
1852, 287.
G. S. 142, § 65.
P. S. 183, § 78.
5 Mass. 209.

SECTION 72. A person so summoned, who dwells or has a usual place of business in the county in which the writ is returnable, and who neglects, without sufficient reason, to appear and answer within the time herein provided, shall be liable, if the plaintiff recovers judgment and does not otherwise receive his costs, for all costs for the plaintiff's travel and term fees until he appears.

Recovery of
costs.
R. S. 109, § 55.
G. S. 142, § 66.
P. S. 183, § 79.

SECTION 73. If a person who is so summoned does not pay the costs when demanded by the officer who serves the execution, the officer shall state the fact in his return, and if it also appears by the return that the costs have not been paid, the court shall award a new execution against him for the costs.

Liability of
several trust-
ees for plain-
tiff's costs.
1794, 65, § 3.
R. S. 109, § 56.
G. S. 142, § 67.
P. S. 183, § 80.
16 Mass. 475.

SECTION 74. If there are several persons who are summoned as trustees and who are liable for costs under the provisions of the two preceding sections, the second execution shall be awarded against them jointly; and if any one pays more than his proportion, the others shall contribute equally to indemnify him for the excess.

1 SECTION 75. If, while an action by the trustee process is pend- Costs in action
2 ing, the original defendant therein or any other person brings an against trustee.
3 action against the alleged trustee to recover the goods, effects or 1883, 62.
4 credits or any part thereof in his hands or possession, the costs in
5 the later action shall be in the discretion of the court.

1 SECTION 76. If a person summoned as trustee, who dwells or Liability of
2 has a usual place of business in the county in which the writ is re- trustee for
3 turnable, is defaulted in the original action, and if a writ of scire costs on scire
4 facias issues against him, he shall be liable out of his own goods and facias, when.
5 estate for all costs on the scire facias, although he is not adjudged 1794, 65, §§ 3, 6.
6 a trustee, except as hereinafter provided. R. S. 109, § 57.
G. S. 142, § 68.
P. S. 183, § 81.
1 Pick. 164.

1 SECTION 77. He shall not be liable for costs on the scire facias, Same subject.
2 nor shall he be entitled to recover costs, if the court finds that he 1794, 65, § 6.
3 had goods, effects or credits in his hands liable to attachment, and R. S. 109, § 58.
4 has paid and delivered, on the execution issued on the original G. S. 142, § 69.
5 judgment, the whole amount thereof. P. S. 183, § 82.

1 SECTION 78. He shall not be liable for costs on the scire facias Same subject.
2 if he was prevented from appearing in the original action by his R. S. 109, § 59.
3 absence from the commonwealth or by any other sufficient cause, 1851, 233, § 75.
4 but the court may allow him his costs as if he had appeared in the 1852, 312, § 58.
5 original action. G. S. 142, § 70.
P. S. 183, § 83.

1 SECTION 79. If a person who is summoned as trustee is held Execution for
2 liable to pay from his own estate the costs on the scire facias as costs against
3 before provided, and if he is at the same time liable for the plaintiff's trustee.
4 costs in the original action, one execution shall be issued against R. S. 109, § 60.
5 him for both amounts. G. S. 142, § 71.
P. S. 183, § 84.

1 SECTION 80. If there are several trustees who are liable to the Costs against
2 writ of scire facias, and the plaintiff, without sufficient reason, sues several trust-
3 out two or more writs when he might have joined all the trustees tees.
4 in one writ, he shall recover no more costs than if he had sued out R. S. 109, § 61.
5 only one writ, and the court may apportion the costs among all the G. S. 142, § 72.
6 trustees liable therefor. P. S. 183, § 85.

1 SECTION 81. If an adverse claimant is admitted as a party, the — in case of
2 court may award costs between him, the plaintiff and the supposed adverse claim-
3 trustee, or any of them. ant.
G. S. 142, § 73. 1817, 148, § 1.
R. S. 109, § 21.
P. S. 183, § 86. 6 Allen, 122. 111 Mass. 28. 134 Mass. 251.
15 Gray, 70. 99 Mass. 501. 123 Mass. 319. 176 Mass. 124.

1 SECTION 82. If the damages which are recovered in an action — if damages
2 brought under the trustee process do not exceed ten dollars, exclu- do not exceed
3 sive of all costs which have accrued in any former action, the plain- ten dollars.
4 tiff shall recover no costs. 1855, 300, § 1.
1857, 200, § 1.
G. S. 142, § 74.
1881, 216, § 1. P. S. 183, §§ 87, 88.

CHAPTER 190.

OF THE REPLEVIN OF PROPERTY.

SECTIONS 1-7. — Replevin of Beasts Distrained.

SECTIONS 8-14. — Replevin of other Property.

SECTIONS 15-24. — General Provisions.

REPLEVIN OF BEASTS DISTRAINED.

Replevin of
beasts dis-
trained.
B. L. 32.
C. L. 18, § 3;
132, § 1.
1789, 26, § 1.
R. S. 113, § 17.
G. S. 143, § 1.

SECTION 1. A person whose beasts have been distrained or im-
pounded in order to recover a penalty or forfeiture supposed to have
been incurred by their going at large or to obtain satisfaction for
damages alleged to have been done by them may cause them to be
replevied.

P. S. 184, § 1.

2 Cush. 88.

7 Cush. 355.

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Bond.
C. L. 132, § 1;
162, § 4.
1701-2, 3.
1720-1, 13, § 2.
1789, 26, § 1.
R. S. 113, § 19.
G. S. 143, § 3.
P. S. 184, § 3.
100 Mass. 122.
136 Mass. 515.

SECTION 2. Before the officer serving the writ delivers the beasts
to the plaintiff, he shall take from the plaintiff or a person in his
behalf a bond payable to the defendant in a sum equal to double
the value of the beasts, with sufficient sureties, conditioned to prose-
cute the replevin to final judgment and to pay such damages and
costs as the defendant shall recover and to return the beasts if such
shall be the final judgment.

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Appraisal
of property
replevied.
1824, 106, § 1.
R. S. 113, § 20.
G. S. 143, § 4.
P. S. 184, § 4.

SECTION 3. The writ shall require that the bond be given for
double the value of the beasts, but shall not express the amount for
which it shall be given. If the parties do not agree as to the value
of the beasts, it shall be ascertained by three disinterested ap-
praisers, who shall be appointed and sworn by the officer, and the
penalty of the bond shall be double the value ascertained by such
appraisers or by a majority of them.

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Return of writ,
etc.
1789, 26, § 1.
1824, 106, § 1.
R. S. 113, § 21.
G. S. 143, § 5.
P. S. 184, § 5.
12 Met. 516.
97 Mass. 316.

SECTION 4. The officer shall return such bond with the writ to
the justice or court to which the writ is returnable, for the use of
the defendant; and he shall include in his return, indorsed on the
writ, a certificate of the appointment of the appraisers, of the ap-
praisal and of the expenses thereof.

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Form of judg-
ment for
defendant.
1789, 26, § 2.
R. S. 113, §§ 22,
23.
G. S. 143, §§ 6, 7.
P. S. 184, §§ 6, 7.

SECTION 5. If the court or justice finds that the beasts were
lawfully taken or distrained, the defendant shall have judgment for
the amount found to be due from the plaintiff for the penalty or for-
feiture or for the damages for which the beasts were impounded,
with the legal fees, costs, charges and expenses incurred by reason
of the distress, and with the costs of the action of replevin; or in-
stead thereof the court may render a judgment for a return of the
beasts, to be held by the defendant irrepleviable by the plaintiff,
and for the damages for the taking of the beasts by the replevin and
for the defendant's costs. If so returned, the beasts shall be held
and disposed of as if they had not been replevied.

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— for plaintiff.
1789, 26, § 2.
R. S. 113, § 24.
G. S. 143, § 8.
P. S. 184, § 8.

SECTION 6. If the court or justice finds that the beasts were
unlawfully taken or distrained, the plaintiff shall have judgment for
damages caused by such taking and detaining and for costs.

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1 SECTION 7. If, in an action before a trial justice, it is found that
2 the amount demanded for the penalty, forfeiture or damages ex-
3 ceeds three hundred dollars, or that the title of the beasts is in
4 question and that their value exceeds three hundred dollars, the case
5 shall, at the request of either party, be transferred to the superior
6 court, as provided in sections nineteen, twenty and twenty-one of
7 chapter one hundred and sixty-one.

Removal of
action to su-
perior court.
1789, 26, § 3.
R. S. 113, § 26.
G. S. 143, § 9.
P. S. 184, § 9.

REPLEVIN OF OTHER PROPERTY.

1 SECTION 8. If goods exceeding twenty dollars in value are un-
2 lawfully taken or detained from the owner or person entitled to
3 their possession, or if goods of that value, which have been attached
4 on mesne process or taken on execution, are claimed by a person
5 other than the defendant in the action in which they have been
6 so attached or taken, the owner or such other person may cause
7 them to be replevied.

Replevin of
goods unlaw-
fully taken or
attached.
C. L. 132, § 1.
1789, 26, § 4.
R. S. 113, § 27.
G. S. 143, § 10.
P. S. 184, § 10.
15 Mass. 359.
17 Mass. 606.
2 Cush. 88.

3 Cush. 261.
11 Cush. 218.
9 Gray, 216.

16 Gray, 213.
9 Allen, 116.
105 Mass. 113, 306.

116 Mass. 371.
121 Mass. 107.
146 Mass. 329.

155 Mass. 539.
156 Mass. 141.
166 Mass. 146.

1 SECTION 9. Before the officer serving the writ delivers the goods
2 to the plaintiff, he shall take from the plaintiff or a person in his
3 behalf a bond payable to the defendant in a sum equal to double
4 the value of the goods, with sufficient sureties, conditioned to pros-
5 ecute the replevin to final judgment and to pay such damages and
6 costs as the defendant shall recover and to return the goods if
7 such shall be the final judgment. The officer shall appraise the
8 goods and return the writ in the manner provided in sections three
9 and four; but if the writ is returnable to the superior court, the
10 bond shall be left with the clerk of the court for the use of the
11 defendant.

Bond.
C. L. 132, § 1.
1789, 26, § 4.
R. S. 113, § 29.
G. S. 143, § 12.
P. S. 184, § 12.
11 Mass. 282.
14 Mass. 313.
5 Pick. 226.
1 Met. 508.
12 Met. 516.
6 Gray, 363.
13 Gray, 459.
105 Mass. 44.
113 Mass. 270.
142 Mass. 519.
165 Mass. 505.

1 SECTION 10. If the court or justice finds that the defendant is
2 entitled to a return of the goods, judgment shall be rendered there-
3 for and for the damages caused by the taking by the replevin and for
4 costs.

Form of judg-
ment for
defendant.
1789, 26, § 4.
R. S. 113, § 30.
G. S. 143, § 13.

3 Allen, 429.
98 Mass. 515.

P. S. 184, § 13.

104 Mass. 328.
109 Mass. 265.

14 Gray, 449.

114 Mass. 458.
136 Mass. 128.

1 SECTION 11. If the goods when replevied had been taken on ex-
2 ecution, or if they had been attached and judgment is afterward
3 rendered for the attaching creditor, and if in either case the service
4 of the execution is delayed by reason of the replevin, the damages
5 to be assessed for the defendant upon a judgment for a return shall
6 be at the rate of not less than twelve per cent a year on the value
7 of the goods for the time during which the service of the execution
8 was so delayed.

Damages, how
assessed.
1789, 26, § 4.
R. S. 113, § 31.
G. S. 143, § 14.
P. S. 184, § 14.
4 Mass. 614.
12 Mass. 406.
11 Pick. 223.

1 SECTION 12. Money recovered by an officer in an action of re-
2 plevin for goods attached or taken on execution by him or recov-
3 ered by him in an action upon the replevin bond shall be applied as
4 follows:

Disposal of
money recov-
ered by officer
after replevin
of goods
attached, etc.
R. S. 113, § 32.
G. S. 143, § 15.
P. S. 184, § 15.

5 First, To pay the lawful fees and charges of the officer and the
6 reasonable expenses of the action of replevin and of the action on

the bond, so far as such expenses are not reimbursed by the costs recovered. 7 8

Disposal of money recovered by officer after replevin of goods attached, etc.

Second, To pay to the creditor at whose suit the goods were attached or taken on execution the amount recovered by him in that action, or so much thereof as remains unpaid, with interest thereon at the rate of twelve per cent a year for the time during which the money has been withheld from him, or the service of his execution has been delayed by reason of the replevin. 9 10 11 12 13 14

If the attaching creditor in such case does not recover judgment in the action in which the attachment was made, or if a balance remains of the money so recovered by the officer after paying what is due to the creditor, such money shall be applied in the same manner as the surplus, if any, of the proceeds of sale would and ought to have been applied had the goods been sold on execution. 15 16 17 18 19 20 21

Same subject.
R. S. 113, § 33.
G. S. 143, § 16.
P. S. 184, § 16.

SECTION 13. All amounts received by such creditor from the proceeds of the sale of goods attached or taken on execution and afterward returned, or received by him for the value of goods not returned, or recovered from the officer for the insufficiency of the sureties on the bond, shall be applied to the discharge of the judgment recovered by the creditor; and all amounts received as interest or damages for the delay of his execution shall be applied, one-half to the sole use of the creditor, and the other half in discharge of the judgment. 1 2 3 4 5 6 7 8 9

Form of judgment for plaintiff.
R. S. 113, § 34.
G. S. 143, § 17.
P. S. 184, § 17.
8 Allen, 93.

SECTION 14. If the court or justice finds that the goods were unlawfully taken or attached or unlawfully detained by the defendant, the plaintiff shall have judgment for his damages caused thereby and for costs. 1 2 3 4

120 Mass. 543.

GENERAL PROVISIONS.

Approval of sureties on replevin bond.
1870, 309, § 1.
P. S. 184, § 18.
1895, 388, § 1.
142 Mass. 519.

SECTION 15. Sureties on a replevin bond may be approved in writing by the officer who serves the writ or by the defendant or by a justice of a police, district or municipal court or by a master in chancery, and, if approved otherwise than by the officer, he shall not be responsible for their sufficiency. 1 2 3 4 5

Proceedings.
1870, 309, § 2.
P. S. 184, § 19.
1895, 388, § 2.

SECTION 16. If such sureties are to be approved by a justice of a police, district or municipal court or by a master in chancery, the officer who serves the writ shall give notice in writing to the defendant or to the person from whose custody the property has been taken, stating the time and place of hearing thereon and the names and residences of the proposed sureties, allowing not less than one hour before the time appointed for the hearing and at the rate of one hour additional for each mile of travel. 1 2 3 4 5 6 7 8

Fees of master.
1870, 309, § 3.
P. S. 184, § 20.

SECTION 17. The fee of the master for the hearing and decision shall be one dollar; and, if the bond is approved, such fee shall be taxed in the plaintiff's costs, if he prevails in the action. 1 2 3

Defects in bond not cause for dismissal.

SECTION 18. An action of replevin shall not be dismissed by reason of a defect in the form or substance of the bond taken there- 1 2

3 in, if the court or justice is satisfied that such bond was intended in
 4 good faith as a compliance with the law requiring a bond to be
 5 taken before service of the writ and if the plaintiff, within such time
 6 and upon such terms as the court orders, files a new bond such as is
 7 required by law, approved by the court or in the manner provided
 8 in section four of chapter one hundred and sixty-nine.

1878, 273.
 P. S. 184, § 21.

1 SECTION 19. An action shall not be maintained against a surety
 2 on a replevin bond, unless the writ is served on him within one
 3 year after the final judgment in the action of replevin. If the writ
 4 of replevin is not entered, an action on the bond shall not be main-
 5 tained unless it is entered within one year after the return day of
 6 the writ of replevin.

Limitation of
 actions against
 sureties on
 bonds.
 R. S. 113, § 40.
 G. S. 143, § 23.
 P. S. 184, § 22.

1 SECTION 20. Damages in replevin shall be assessed by the jury
 2 by which the cause is tried, if there is a trial by jury; otherwise,
 3 by the court or justice or by a jury impanelled for the purpose.

Assessment of
 damages.
 R. S. 113, § 35.
 G. S. 143, § 19.
 P. S. 184, § 23.

1 SECTION 21. If the goods replevied had been attached, they
 2 shall, upon a judgment for a return, be held liable to the attach-
 3 ment until final judgment in the action in which they were attached,
 4 and for thirty days thereafter, so that they may be taken on execu-
 5 tion. If such final judgment is rendered before the return of the
 6 goods, or if the goods when replevied were seized and held on ex-
 7 ecution, they shall be held subject to the same attachment or
 8 seizure for thirty days after the return, in order that the execution
 9 may be served thereon, or the service thereof completed, in like
 10 manner as it might have been if the goods had not been replevied.

Proceedings
 upon judgment
 for return of
 goods attached,
 etc.
 1789, 26, § 4.
 R. S. 113, § 36.
 G. S. 143, § 18.
 P. S. 184, § 24.

1 SECTION 22. If the officer to whom the writ of return is com-
 2 mitted cannot find the beasts or goods which were replevied, so as
 3 to deliver them to the defendant, he shall make a return of that
 4 fact upon the writ of return; and the defendant shall, upon motion,
 5 be entitled to a writ of reprisal to take the beasts or goods of the
 6 plaintiff and deliver them to the defendant to be held and disposed
 7 of according to law.

Writ of re-
 prisal.
 1789, 26, § 7.
 R. S. 113, § 37.
 G. S. 143, § 22.
 P. S. 184, § 25.

1 SECTION 23. The writ of return in actions of replevin shall be
 2 substantially in the form heretofore established and used in like
 3 cases, and the writ of reprisal shall be substantially in the form of
 4 a writ of withernam.

Form of writs
 of return and
 reprisal.
 1789, 26, §§ 6, 7.
 R. S. 113, § 38.
 G. S. 143, § 20.
 P. S. 184, § 26.

1 SECTION 24. The foregoing provisions shall not preclude the
 2 defendant from his remedy on the replevin bond, nor, except as
 3 provided in section fifteen, from his remedy against the officer for
 4 the insufficiency of the sureties on the bond, to recover the value of
 5 the goods and the loss or damage caused by the replevin, although
 6 he has endeavored to recover the same by the writs of return and
 7 of reprisal as before provided.

Effect of fore-
 going provi-
 sions.
 R. S. 113, § 39.
 G. S. 143, § 21.
 P. S. 184, § 27.
 S. Met. 205.

CHAPTER 191.

OF HABEAS CORPUS, PERSONAL REPLEVIN AND PERSONAL LIBERTY.

SECTIONS 1-34. — Habeas Corpus.

SECTIONS 35-47. — Personal Replevin.

SECTIONS 48-53. — Personal Liberty.

HABEAS CORPUS.

Writ of habeas corpus as of right.
1784, 72, § 1.
R. S. 111, §§ 1, 2.
1855, 489, §§ 2, 20.
G. S. 144, §§ 1, 2.
P. S. 185, §§ 1, 2.
2 Pick. 172.
12 Cush. 508.
2 Gray, 406.
167 Mass. 11.

SECTION 1. Whoever is imprisoned or restrained of his liberty may, as of right and of course, prosecute a writ of habeas corpus, according to the provisions of this chapter, to obtain release from such imprisonment or restraint, if it proves to be unlawful, unless: First, He has been committed for treason or felony, or on suspicion thereof, or as accessory before the fact to a felony, and the cause has been plainly expressed in the warrant of commitment.

Second, He has been convicted or is in execution upon legal process, civil or criminal.

Third, He has been committed on mesne process in a civil action in which he was liable to arrest and imprisonment, unless excessive and unreasonable bail was required.

— by whom issued.
1784, 72, § 1.
R. S. 111, §§ 7, 8.
1855, 489, § 3.
G. S. 144, § 3.
P. S. 185, § 3.
19 Pick. 339.

SECTION 2. The writ may be issued, irrespective of the county in which the person is imprisoned or restrained, by the supreme judicial court or the superior court, by a probate, police, district or municipal court, by a judge of any of said courts, or by a justice of the peace if none of said judges is known to such justice to be within five miles of the place where the person is imprisoned or restrained.

— form of petition for.
1784, 72, § 1.
R. S. 111, § 3.
G. S. 144, § 4.
P. S. 185, § 4.
161 Mass. 46.

SECTION 3. The petition for the writ shall be in writing, signed and sworn to by the person for whose release it is intended, or by a person in his behalf, and shall state by whom and where the person is imprisoned or restrained, the name of the prisoner and of the person detaining him, if their names are known, or a description of them, if their names are not known, and the cause or pretence of such imprisonment or restraint, according to the knowledge and belief of the petitioner.

If the imprisonment or restraint is by virtue of a warrant or other process, a copy thereof shall be annexed, unless it appears that such copy has been demanded and refused or that, for a sufficient reason, a demand therefor could not be made.

— issue of.
1784, 72, § 2.
1808, 80.
R. S. 111, § 4.
1855, 489, § 3.
1859, 291, § 1.
G. S. 144, § 5.
1861, 91, § 1.
P. S. 185, § 5.
161 Mass. 46.

SECTION 4. The court or magistrate to whom the petition is presented shall, without delay, issue a writ of habeas corpus, substantially in the form heretofore established and used in this commonwealth, and returnable forthwith to the supreme judicial court, or a justice thereof, at such place as shall be designated in the writ.

— form of.
1784, 72, §§ 1, 2.
R. S. 111, § 5.
1859, 291, § 2.

SECTION 5. If the imprisonment or restraint is not by a sheriff, deputy sheriff or jailer, the writ shall be in the following form: —

G. S. 144, § 6.

P. S. 185, § 6.

COMMONWEALTH OF MASSACHUSETTS.

[SEAL.] To the sheriffs of our several counties and to their respective deputies,
Greeting.

We command you that the body of _____, of _____, by _____, of _____, imprisoned and restrained of his liberty, as it is said, you take and have before _____ a justice of our supreme judicial court at _____ immediately after the receipt of this writ, to do and receive what our said justice shall then and there consider concerning him in this behalf; and summon said _____ then and there to appear before our said justice to show the cause of the taking and detaining of said _____; and have you there this writ with your doings thereon.

Witness _____ at _____ this _____ day of _____ in the year _____.

1 SECTION 6. If the writ is issued by the court when sitting for
2 the transaction of business, it shall be signed by the clerk, other-
3 wise by the magistrate issuing it, and may be served in any county
4 by a sheriff or deputy sheriff thereof or of any other county.

How signed
and served.
R. S. 111, § 6.
G. S. 144, § 7.
P. S. 185, § 7.

1 SECTION 7. The person who has the custody of the prisoner may
2 be designated by his office or by his own name, or, if they are un-
3 known or uncertain, he may be described by a fictitious name and
4 the person upon whom the writ is served shall be held to be the
5 person intended.

Description of
custodian of
prisoner.
R. S. 111, § 10.
G. S. 144, § 8.
P. S. 185, § 8.

1 SECTION 8. The person restrained shall be designated by his
2 name, if known; otherwise, he may be so described as to identify
3 him.

— of prisoner.
R. S. 111, § 11.
G. S. 144, § 9.
P. S. 185, § 9.

1 SECTION 9. If the person restrained is confined in jail or is in
2 the custody of a civil officer, the court or magistrate granting the
3 writ shall certify thereon the amount to be paid for the expense of
4 transporting him from the place of imprisonment, and the officer
5 shall not be bound to obey the writ unless that amount is paid or
6 tendered to him.

Advances prior
to service of
writ.
1784, 72, § 3.
R. S. 111, § 12.
G. S. 144, § 10.
P. S. 185, § 10.

1 SECTION 10. Any person to whom the writ is directed shall re-
2 ceive it, and, upon payment or tender of the charges demandable
3 for the execution of it, shall make due return thereof within five days
4 after receiving it.

Return of writ.
1784, 72, § 3.
R. S. 111, § 13.
G. S. 144, § 11.
P. S. 185, § 11.

1 SECTION 11. The person in whose custody the prisoner is found
2 shall state in writing, plainly and unequivocally, to the court or
3 justice before whom the writ is returnable:—

Contents of
return.
R. S. 111, §§ 14,
15.
G. S. 144, §§ 12,
13.
P. S. 185, §§ 12,
13.

4 First, Whether the prisoner is in his custody or power or under
5 his restraint.

6 Second, If the prisoner is in his custody or power or under his
7 restraint, his specific authority for and the true and whole cause of
8 such imprisonment or restraint, with a copy of the writ, warrant or
9 other process, if any, upon which the prisoner is detained.

10 Third, If the prisoner has been in his custody or power or under
11 his restraint, and has been transferred to that of another, particularly
12 to whom, when, why and by what authority such transfer was made.

13 The statement shall be signed by him and, unless he is a sworn
14 public officer and makes the statement in his official capacity, shall
15 be sworn to by him.

Prisoner to be produced.
1784, 72, § 3.
R. S. 111, § 16.
G. S. 144, § 14.
P. S. 185, § 14.

SECTION 12. The person who makes the statement shall at the same time produce the prisoner, if in his custody or power or under his restraint, according to the command of the writ, unless prevented by the illness or infirmity of the prisoner.

Provision if prisoner is ill, etc.
R. S. 111, § 17.
G. S. 144, § 15.
P. S. 185, § 15.

SECTION 13. If by reason of the illness or infirmity of the prisoner he cannot without danger be taken to the place appointed for the return of the writ, that fact shall be stated in the statement and, if proved, the judge may proceed to the place where the prisoner is confined and there make his examination; or he may postpone the examination or may make such other order in the case as law and justice require.

Return of writ.
1784, 72, § 4.
R. S. 111, § 9.
G. S. 144, § 16.
P. S. 185, § 16.
161 Mass. 46.

SECTION 14. If the court to which the writ is returnable is not sitting for the transaction of business when the writ is returned, the return shall be made before a justice thereof. If the writ is returned before a justice when the court is sitting for the transaction of business, he may adjourn the case into the court, to be there heard and determined.

Examination of causes of imprisonment.
1784, 72, § 5.
R. S. 111, §§ 18, 21.
G. S. 144, §§ 17, 18.
P. S. 185, §§ 17, 18.

SECTION 15. After the writ has been returned, the prisoner may deny any of the facts set forth in the statement and may allege any other material facts; and the court or justice shall examine summarily and without delay the causes of the imprisonment or restraint, hear the evidence produced by any persons interested or authorized to appear and dispose of the prisoner as law and justice require, and may adjourn the examination from time to time.

Notice to person interested in detention of prisoner.
R. S. 111, § 19.
G. S. 144, § 22.
P. S. 185, § 19.

SECTION 16. If it appears from the return of the writ or otherwise that the prisoner is detained on a process under which another person has an interest in continuing his imprisonment or restraint, he shall not be discharged until notice has been given to such other person or his attorney, if within the commonwealth or, if without the commonwealth, if the court orders notice.

— to attorney general if prisoner held for crime.
R. S. 111, § 20.
G. S. 144, § 23.
P. S. 185, § 20.

SECTION 17. If it appears from the return of the writ or otherwise that the prisoner is imprisoned on a criminal accusation, he shall not be discharged until notice has been given to the attorney general or other attorney for the commonwealth.

Custody of prisoner pending examination.
R. S. 111, § 26.
G. S. 144, § 24.
P. S. 185, § 21.

SECTION 18. Until judgment is given, the court or justice may remand the prisoner, bail him to appear from day to day, commit him to the sheriff of the county, or place him under such other care and custody as the circumstances of the case require. 107 Mass. 172.

Release of prisoner on bail.
1784, 72, § 5.
R. S. 111, § 23.
G. S. 144, § 25.
P. S. 185, § 22.

SECTION 19. If the prisoner is detained for a cause or crime for which he is bailable, he shall be admitted to bail if sufficient bail is offered; and if not, he shall be remanded with an order of the court or justice expressing the amount in which he shall be held to bail and the court at which he shall be required to appear; and any magistrate authorized to admit to bail may, at any time before the sitting of said court, bail the prisoner pursuant to such order.

1 SECTION 20. If the prisoner has been committed on mesne pro-
 2 cess in a civil action for want of bail, and it appears that the amount
 3 for which bail was required is excessive and unreasonable, the court
 4 or justice shall decide how much bail is reasonable, and shall order
 5 that on giving such bail the prisoner shall be discharged.

Bail of pris-
 oner committed
 in civil action
 for want of
 bail.
 1784, 72, § 5.
 R. S. 111, § 24.
 G. S. 144, § 26.
 P. S. 185, § 23.

1 SECTION 21. If a person is committed to jail on a criminal ac-
 2 cusation for want of bail, a justice of the superior court, or of a
 3 police, district or municipal court or a trial justice, may issue a
 4 writ of habeas corpus and cause the prisoner to be brought before
 5 him, when it is necessary for the purpose of admitting him to bail
 6 pursuant to the provisions of chapter two hundred and seventeen.

— on criminal
 charge.
 1812, 30.
 1821, 109.
 R. S. 87, § 3;
 111, § 36.
 G. S. 144, § 30.
 P. S. 185, § 27.
 2 Gray, 406.

1 SECTION 22. If the prisoner is lawfully imprisoned or restrained
 2 and is not entitled to be admitted to bail, he shall be remanded to
 3 the person from whose custody he was taken or any other person
 4 or officer authorized by law to detain him.

Prisoner to be
 remanded,
 when.
 R. S. 111, § 25.
 G. S. 144, § 27.
 P. S. 185, § 24.

1 SECTION 23. If no legal cause is shown for the imprisonment
 2 or restraint, the court or justice shall discharge the prisoner.

G. S. 144, § 28.

P. S. 185, § 25.

10 Gray, 240.

161 Mass. 46.

— to be dis-
 charged, when.
 1784, 72, § 5.
 R. S. 111, § 22.

1 SECTION 24. No person who has been discharged upon a habeas
 2 corpus shall be again imprisoned or restrained for the same cause,
 3 unless indicted therefor, convicted thereof, or committed for want
 4 of bail by a court of record having jurisdiction of the cause; or
 5 unless, after a discharge for defect of proof or for some material
 6 defect in the commitment in a criminal case, he is again arrested
 7 on sufficient proof and committed by legal process.

Second impris-
 onment after
 discharge.
 1784, 72, § 12.
 R. S. 111, § 34.
 G. S. 144, § 29.
 P. S. 185, § 26.
 153 Mass. 154.

1 SECTION 25. The provisions of this chapter shall not affect the
 2 power of the supreme judicial court, or of a justice thereof, to issue
 3 a writ of habeas corpus at discretion, and thereupon to bail a person
 4 for whatever cause he has been committed or restrained or to dis-
 5 charge him as law and justice require, unless he has been committed
 6 by the governor and council, the senate or the house of representa-
 7 tives, in the manner and for the causes mentioned in the constitu-
 8 tion; nor affect the power of any court or magistrate to issue a
 9 writ of habeas corpus, when necessary to bring before it or him a
 10 prisoner for trial in a criminal case pending before it or him; or
 11 bring in a prisoner to be examined as a witness in a suit or pro-
 12 ceeding, civil or criminal, pending before it or him, if the personal
 13 attendance and examination of the witness is necessary for the at-
 14 tainment of justice.

Limitation of
 scope of chap-
 ter.
 1784, 72, § 2.
 R. S. 111, §§ 35,
 37.
 G. S. 144, §§ 31,
 32.
 P. S. 185, §§ 28,
 29.
 107 Mass. 187.

1 SECTION 26. An officer who refuses or neglects for six hours to
 2 deliver a true copy of the warrant or process by which he detains a
 3 prisoner to any person who demands such copy and tenders the fees
 4 therefor shall forfeit two hundred dollars to such prisoner.

Penalty on
 officer refusing
 copy of war-
 rant.
 1784, 72, § 6.
 R. S. 111, § 27.
 G. S. 144, § 33.

P. S. 185, § 30.

1 SECTION 27. If a person to whom a writ of habeas corpus is
 2 directed refuses to receive it, or neglects to obey and execute it

Proceedings
 upon refusal
 to obey writ.

1784, 72, §§ 7, 8. according to the provisions of this chapter and no sufficient excuse 3
 R. S. 111, § 28. is shown therefor, the court or justice before whom the writ was 4
 G. S. 144, § 34. returnable shall forthwith by process of attachment, as for a con- 5
 P. S. 185, § 31. tempt, compel obedience to the writ, and punish the person guilty 6
 of the contempt. 7

Proceedings upon refusal to obey writ. SECTION 28. If such attachment is issued against a sheriff or his 1
 R. S. 111, § 29. deputy, it may be directed to a special sheriff or to some other 2
 G. S. 144, § 35. person designated therein, who shall have full power to execute it; 3
 P. S. 185, § 32. and if the sheriff or his deputy is to be committed upon such process, 4
 he may be committed to the jail of any county other than his 5
 own. 6

Same subject. SECTION 29. Upon the refusal or neglect of the person to whom 1
 R. S. 111, § 30. the writ of habeas corpus is directed, the court or justice may also 2
 G. S. 144, § 36. issue a precept to any officer or other person designated therein, 3
 P. S. 185, § 33. commanding him to bring the prisoner forthwith before such court 4
 or justice, who shall thereupon discharge, bail or remand the prisoner 5
 as if he had been brought in upon the writ of habeas corpus. 6

Penalty for refusing to obey writ. SECTION 30. Whoever refuses or neglects to receive and exe- 1
 1784, 72, § 7. cute a writ of habeas corpus shall forfeit four hundred dollars to 2
 R. S. 111, § 31. the party aggrieved thereby. G. S. 144, § 37. P. S. 185, § 34. 3

Resistance, etc., of writ a contempt. SECTION 31. Whoever resists the service of the writ of habeas 1
 1848, 254. corpus, or disobeys it when served, shall be liable to attachment as 2
 G. S. 144, § 38. for a contempt of the court or justice before whom the writ is re- 3
 P. S. 185, § 35. turnable. 4

Penalty for removing or concealing prisoner. SECTION 32. Whoever, having in his custody or power a person 1
 R. S. 111, § 32. entitled to a writ of habeas corpus, transfers him to the custody, or 2
 G. S. 144, § 39. places him under the power or control, of another person, conceals 3
 P. S. 185, § 36. him or changes the place of his confinement, with intent to evade 4
 the service of such writ or to avoid the effect thereof, whether the 5
 writ has been issued or not, shall forfeit four hundred dollars to the 6
 party aggrieved thereby. 7

— not to bar action for false imprisonment, etc. SECTION 33. The recovery of any penalty imposed by the fore- 1
 R. S. 111, § 33. going provisions of this chapter shall not bar an action at common 2
 G. S. 144, § 40. law for false imprisonment, or for a false return to the writ of 3
 P. S. 185, § 37. habeas corpus, or for any other injury or damage sustained by the 4
 aggrieved party. 5

Same subject. SECTION 34. The provisions of this chapter shall not authorize 1
 1861, 91, § 3. the taking of a person by writ of habeas corpus out of the custody 2
 P. S. 185, § 39. of the United States marshal, or his deputy, who holds him by legal 3
 and sufficient process issued by any court or magistrate of compe- 4
 tent jurisdiction; but the provisions of this section shall not affect 5
 the authority of the supreme judicial court or of its justices, in ac- 6
 cordance with the provisions of the constitution of the United 7
 States and of this commonwealth, to investigate and determine 8
 the validity and legal effect of any process which may be relied on 9
 to defeat the writ, or any other matter properly arising. 10

PERSONAL REPLEVIN.

1 SECTION 35. Whoever is imprisoned, restrained of his liberty or
 2 held in duress, unless in the custody of a public officer of the law
 3 by force of a lawful warrant or process, civil or criminal, issued by
 4 competent authority, shall be entitled as of right to the writ of per-
 5 sonal replevin.

P. S. 185, § 40.

8 Met. 102.

Persons en-
 titled to writ of
 personal re-
 plevin.
 1786, 58, § 1.
 R. S. 111, § 38.
 1837, 221, § 1.
 G. S. 144, § 42.

1 SECTION 36. The writ shall be issued fourteen days at least
 2 before the return day from the superior court in the county in which
 3 the plaintiff is confined, shall be directed to the sheriff, deputy
 4 sheriff or special sheriff of the county, shall be served without delay
 5 by him to whom it is delivered and shall be in the following form : —

Form, issue,
 service and
 return of writ.
 1786, 58, §§ 1, 2.
 1837, 221, §§ 2-4.
 G. S. 144, §§ 43-
 45.
 P. S. 185, §§ 41-
 43.

COMMONWEALTH OF MASSACHUSETTS.

———, ss. To the sheriff of our county of _____ or his deputy, or to the
 [L. s.] special sheriff thereof. Greeting.

We command you that justly and without delay you cause to be replevied
 C. D., who (as it is said) is taken and detained at _____, within our said county,
 by the duress of G. H., that said C. D. may appear at our superior court next
 to be holden at _____, within our county aforesaid, then and there in our
 said court to demand right and justice against said G. H. for the duress and
 imprisonment aforesaid, and to prosecute his replevin as the law directs : —

Provided, said C. D. shall before his deliverance give bond to said G. H. in
 such amount as you shall judge reasonable, with at least two sureties having
 sufficient within your county, and with condition to appear at our said court to
 prosecute his replevin against said G. H. and to have his body there ready to be
 re-delivered, if thereto ordered by the court; and to pay all such damages and
 costs as shall be then and there awarded against him. Then, and not otherwise,
 are you to deliver him. And if said C. D. is by you delivered at any day before
 the sitting of our said court, you are to summon said G. H. by serving him with
 an attested copy of this writ, that he may appear at our said court to answer to
 said C. D.

Witness A. M., Esq., at Boston the _____ day of _____ in the year _____
 J. A. W., Clerk.

1 SECTION 37. The prisoner shall not be released from his impris-
 2 onment or restraint by force of such writ until he gives bond as
 3 required by such writ. The bond shall be returned with the writ
 4 like a bail bond, and shall be left in the clerk's office, to be deliv-
 5 ered to the defendant upon demand.

Bond prerequi-
 site to release.
 1786, 58, § 2.
 1837, 221, § 5.
 G. S. 144, § 46.
 P. S. 185, § 44.

1 SECTION 38. The officer who serves the writ shall be answerable
 2 for the insufficiency of the sureties on the bond, in like manner as he
 3 is answerable for taking insufficient bail in a civil action, under the
 4 provisions of section three of chapter one hundred and sixty-nine,
 5 and the bond may be approved in the same manner as a bail bond,
 6 under the provisions of section four of said chapter.

Officer serving
 writ liable for
 sureties.
 1837, 221, § 6.
 G. S. 144, § 47.
 P. S. 185, § 45.

1 SECTION 39. If it appears that the plaintiff was unlawfully im-
 2 prisoned or restrained, he shall be discharged, and shall recover
 3 costs and damages for the imprisonment and detention.

Discharge of
 plaintiff.
 1837, 221, § 7.
 G. S. 144, § 48.
 P. S. 185, § 46.

1 SECTION 40. If the plaintiff does not maintain his action, the
 2 defendant shall have judgment for costs and for any damages he has
 3 sustained by reason of the replevin.

Judgment for
 defendant for
 costs and
 damages.
 1786, 58, § 3.

Judgment for
re-delivery
of body of
plaintiff.
1786, 58, § 3.
1837, 221, § 9.
G. S. 144, § 50.
P. S. 185, § 48.

SECTION 41. If it appears that the defendant is bail for the plaintiff, or is entitled to the custody of the plaintiff, as his child, ward, servant, apprentice or otherwise, he shall have judgment for a re-delivery of the body, to be held and disposed of according to law. 1
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Proceedings if
defendant
secreted, etc.,
plaintiff.
1786, 58, § 4.
1837, 221, § 10.
G. S. 144, § 51.
P. S. 185, § 49.

SECTION 42. If it appears from the return of the writ that the defendant has secreted or conveyed away the plaintiff, so that the officer cannot deliver him, the court shall on motion issue a capias to take the defendant and him safely keep, so that he may be had at the next sitting of the court, to traverse the return of the writ: but the defendant may give bail for his appearance as in a civil case, in such amount as the officer may judge reasonable. 1
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Same subject.
1786, 58, § 4.
1837, 221, § 11.
G. S. 144, § 52.
P. S. 185, § 50.

SECTION 43. At the sitting at which the capias is returned, the defendant may deny by answer the return on the writ; and if it appears on the trial that he is not guilty of secreting or conveying away the plaintiff as set forth in the return, he shall be discharged and shall recover his costs. 1
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Same subject.
1786, 58, § 4.
1837, 221, § 12.
G. S. 144, § 53.
P. S. 185, § 51.

SECTION 44. If the defendant does not traverse the return, or if upon a traverse the issue is found against him, an alias writ of capias shall be issued, and he shall thereupon be committed to jail until he produces the plaintiff or proves him to be dead. If the defendant suggests such death at any time after committal as aforesaid, the court shall at his expense impanel a jury to try the fact, and if the death is proved, the defendant shall be discharged. 1
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Same subject.
1786, 58, § 4.
1837, 221, § 13.
G. S. 144, § 54.
P. S. 185, § 52.

SECTION 45. If, at any time after such return of secreting and conveying away, the defendant produces the plaintiff in the court to which the writ of personal replevin was returned or in which the action is pending, the court shall deliver the plaintiff from restraint, upon his giving bond agreeably to the condition of the writ, and, for want of such bond, the plaintiff shall be committed to abide the judgment on the replevin; and in either case the action shall proceed as if the plaintiff had been delivered on the writ of personal replevin. 1
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Writ may be
sued out by
whom.
1786, 58, § 6.
1837, 221, § 15.
G. S. 144, § 56.
P. S. 185, § 54.

SECTION 46. The writ may be sued out by any person for and in behalf of the plaintiff, and may be prosecuted to final judgment without any express power for that purpose; but the person so appearing shall, when required during the pendency of the action, give security in such manner as the court orders for the payment of all damages and costs awarded against the plaintiff. 1
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Description of
prisoner.
1837, 221, § 16.
G. S. 144, § 57.
P. S. 185, § 55.

SECTION 47. If the name of the defendant or person to be delivered is unknown or uncertain, he may be described in the writ of personal replevin or in any process under the same as in a writ of habeas corpus under the provisions of sections seven and eight. 1
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4

PERSONAL LIBERTY.

Personal lib-
erty, how
secured.
1894, 536, § 1.

SECTION 48. No person shall be deprived of his liberty or held in custody by any person or in any place against his will or, if he is a minor, against the will of his parents, guardian or other person 1
2
3

4 entitled to his custody, except by due process of law ; but the pro-
5 visions of this section shall not apply to persons who have been
6 legally convicted of crime and are serving sentence therefor.

1 SECTION 49. Whoever has reason to believe that another person
2 is deprived of his liberty or held in custody in violation of the pro-
3 visions of the preceding section may file a petition under the oath
4 of the petitioner in the probate court for the county in which such
5 person is believed to be detained, stating his name, age and general
6 description, where, when and under what circumstances he was de-
7 prived of his liberty, where he is believed to be detained, the name
8 of the person so depriving him of his liberty, if known, the name
9 of his supposed custodian and any other material facts and cir-
10 cumstances.

Proceedings
to obtain per-
sonal liberty.
1894, 536, § 2.

1 SECTION 50. Upon the filing of such petition, the court shall
2 cause notice to be served upon all the supposed custodians or per-
3 sons who are alleged in said petition to detain or hold said person
4 in custody, or otherwise known, ordering them to appear before
5 said court at a time and place named therein, to be examined as
6 said court shall order ; and may in its discretion cause said person
7 to be brought before it for examination as to his desire to be re-
8 leased and as to any other relevant matters.

Notice to
custodians, etc.
1894, 536, § 3.

1 SECTION 51. The court may examine the witnesses separately
2 and may permit the petitioner, parent, guardian or other person en-
3 titled to the custody of a person deprived of his liberty, in person
4 or by counsel, to examine publicly his alleged custodian as to the
5 condition of such person and the place where he is detained or held
6 in custody ; and may also examine separately and apart, or pub-
7 licly, such person, and may make orders for his release or permit-
8 ting correspondence or personal interviews between him and his
9 friends or relatives, and may modify its orders from time to time
10 upon notice to the parties.

Examination
of witnesses.
1894, 536, § 4.

1 SECTION 52. The probate court may request the district attor-
2 ney for the district in which it is held to attend the examination
3 under the provisions of the four preceding sections, and to conduct
4 or assist in conducting the examination. If the court is unable to
5 obtain satisfactory information, or to satisfactorily determine the
6 questions involved or to furnish proper relief, it shall notify the
7 district attorney, who may institute proceedings under the provi-
8 sions of this chapter or such other proceedings as the nature of the
9 case may require, and the provisions of said sections shall apply to
10 all proceedings under the provisions of the four preceding sections
11 so far as appropriate.

Probate court
may request
the district
attorney to
conduct exam-
ination, etc.
1894, 536, § 5.

1 SECTION 53. The expense for the service of process and notices
2 and for summoning witnesses shall, upon the approval of the court
3 or district attorney, be paid by the county in which such person is
4 detained, if the petitioner is not able to pay them.

Payment of
expenses
regulated.
1894, 536, § 6.

CHAPTER 192.

OF AUDITA QUERELA, CERTIORARI, MANDAMUS AND QUO WARRANTO.

SECTIONS 1-3. — Audita Querela.

SECTION 4. — Certiorari.

SECTION 5. — Mandamus.

SECTIONS 6-13. — Quo Warranto.

AUDITA QUERELA.

Writ of audita querela.

1780, 47, §§ 1, 3, 10, 11.

R. S. 112, §§ 1-4, 6.

G. S. 145, §§ 1-4.

P. S. 186, §§ 1-3, 6.

5 Met. 230.

7 Gray, 206.

9 Allen, 572.

14 Allen, 172.

100 Mass. 244.

161 Mass. 327.

SECTION 1. The writ of audita querela for the purpose of preventing, setting aside or annulling any proceedings upon a judgment or execution shall be sued out of and be returnable to the court in which the judgment was rendered. It shall be sued out and served like an original writ, the forms of process shall be the same as those heretofore established and used in this commonwealth, the proceedings so far as appropriate shall be the same as in personal actions and the court, after the writ has been sued out, may issue an injunction.

Damages, etc.

1780, 47, § 9.

R. S. 112, § 5.

G. S. 145, § 5.

P. S. 186, § 4.

SECTION 2. If the plaintiff prevails upon a writ sued out to set aside or annul proceedings upon an execution, he shall recover the damages sustained by said proceedings, and the judgment upon the audita querela shall be a bar to any other action thereafter brought for the same damages.

Release from imprisonment.

1780, 47, § 12.

R. S. 112, §§ 7-9.

G. S. 145, §§ 6, 7.

P. S. 186, § 5.

SECTION 3. If the plaintiff is imprisoned on the execution or other process complained of, the court may release him upon his giving bond to the defendant in such sum as the court orders, with two or more sureties who shall be approved by the court, conditioned that if final judgment upon the audita querela is rendered for the defendant, he will, within thirty days thereafter, surrender himself to the jailer or other officer by whom he was imprisoned to be detained in custody under the former execution or process or shall within that time pay the amount due on the former execution or process, with the costs. If the plaintiff so surrenders himself, he shall be in custody under the execution or other process on which he was imprisoned as if the writ had not been sued out.

CERTIORARI.

Petition, writ, decree and costs.

R. S. 112, §§ 21-23.

1858, 109.

G. S. 145, §§ 8-12.

1870, 119.

1873, 355.

P. S. 186, §§ 7-12.

4 Mass. 565.

11 Mass. 462.

6 Allen, 131.

103 Mass. 120.

112 Mass. 206.

116 Mass. 193.

SECTION 4. A petition for a writ of certiorari to correct errors in proceedings which are not according to the course of the common law may be presented to a justice of the supreme judicial court and he may, after notice, hear and determine the same. The writ shall not be issued unless the petition therefor is presented within six years next after the proceedings complained of. It may be issued from the clerk's office in any county and shall be returnable as the court orders. Upon such writ the court may quash or affirm the proceedings or enter such judgment as it or the tribunal below should have rendered, or make any appropriate order, judgment or

11 decree, and at any time after the petition is presented may issue an
12 injunction. Upon the petition, and also upon the final adjudicating,
13 costs may be imposed upon any party.

122 Mass. 290.
134 Mass. 313.

MANDAMUS.

1 SECTION 5. A petition for a writ of mandamus may be presented
2 to a justice of the supreme judicial court and he may, after notice,
3 hear and determine the same. Upon the return of the order of no-
4 tice, the person who is required to appear shall file an answer show-
5 ing cause why the writ should not issue, and the petitioner may
6 traverse any material facts alleged in the answer or may demur
7 thereto. The court may require a third person who has or claims a
8 right or interest in the subject matter to appear and answer and to
9 stand as the real party. If the petitioner prevails, his damages shall
10 be assessed and judgment shall be rendered therefor, with costs, and
11 for a peremptory writ of mandamus; otherwise, the party answering
12 shall recover costs of the petitioner. No action shall be maintained
13 for a false answer. All writs and processes may be issued from the
14 clerk's office in any county and shall be returnable as the court
15 orders.

Writ of man-
damus.
1851, 233, §§ 51-
54.
1852, 312, §§ 38-
41.
G. S. 145, §§ 13-
15.
1873, 355.
P. S. 186, §§ 13-
16.
104 Mass. 498.

QUO WARRANTO.

1 SECTION 6. A person whose private right or interest has been
2 injured or is put in hazard by the exercise of a franchise or privi-
3 lege not conferred by law by a private corporation or by persons
4 claiming to be a private corporation, whether he is a member of
5 such corporation or not, may apply to a justice of the supreme
6 judicial court in any county for leave to file an information in the
7 nature of a quo warranto.

Application
for informa-
tion in nature
of quo war-
ranto.
1851, 233, §§ 55,
56.
1852, 312, §§ 42,
43.
G. S. 145, §§ 16,
17.
1871, 366.

P. S. 186, §§ 17, 18.
9 Cush. 506.

1 Gray, 341.
5 Allen, 221.

103 Mass. 138.
163 Mass. 446.

169 Mass. 229.
170 Mass. 71.

1 SECTION 7. The court shall give a summary hearing and if it
2 appears that there is probable cause to believe that the respondent
3 has exercised a franchise or privilege not conferred by law, where-
4 by the private right or interest of the complainant has been injured
5 or is put in hazard, shall grant leave to file the information, which
6 shall be filed in the county in which the respondent has its princi-
7 pal place of business. A copy of the information, with an order
8 of notice returnable, and to be served, when and as the court may
9 order, shall be served on the respondent and on the attorney
10 general.

Hearing on ap-
plication, etc.
1851, 233, §§ 57,
58, 63.
1852, 312, §§ 44,
45, 49.
G. S. 145, §§ 18,
19.
P. S. 186, §§ 19,
20.

1 SECTION 8. If leave is given to file such information, the court,
2 at any time before final judgment, may issue a writ of injunction
3 restraining the respondent from exercising the franchise or privilege
4 in question until the further order of the court.

Injunction.
1851, 233, § 59.
1852, 312, § 46.
G. S. 145, § 20.
P. S. 186, § 21.

1 SECTION 9. If the attorney general believes that there has
2 been a usurpation of a franchise or privilege not conferred by law,
3 he may intervene, have control of the subsequent proceedings and
4 demand a judgment of fine and forfeiture, and the complainant shall
5 no longer be liable for costs. The court shall enter judgment ac-
6 cording to the principles of the common law.

Attorney gen-
eral may
intervene.
1851, 233, § 63.
1852, 312, § 49.
G. S. 145, § 21.
P. S. 186, § 22.

Judgment.
1851, 233, § 60.
1852, 312, § 47.
G. S. 145, § 22.
P. S. 186, § 23.

SECTION 10. If the attorney general does not intervene, and the court finds that the respondent has exercised a franchise or privilege not conferred by law, judgment of forfeiture shall not be entered, but judgment shall be entered that the corporation, or the persons claiming to be such, be perpetually excluded from the exercise of such franchise or privilege, and that the directors, managers, or agents, guilty of the usurpation pay the costs of the complainant.

Respondent's
costs.
1851, 233, §§ 61,
62.
1852, 312, § 48.

SECTION 11. If the court finds that the respondent has not exercised a franchise or privilege not conferred by law, he shall recover costs.

G. S. 145, § 23.

P. S. 186, § 24.

Informations.
1899, 376.
163 Mass. 446.

SECTION 12. The supreme judicial court shall have jurisdiction of informations in the nature of quo warranto filed by the attorney general against a person holding or claiming the right to hold an office or employment, the salary or compensation of which is payable by the commonwealth, a county, city or town.

Effect of chap-
ter.
1851, 233, § 64.
1852, 312, § 50.
G. S. 145, § 24.

SECTION 13. The provisions of this chapter shall not affect the duty of the attorney general to proceed in all cases in which he might otherwise act.

P. S. 186, § 25.

170 Mass. 71.

CHAPTER 193.

OF THE WRIT OF ERROR, OF VACATING JUDGMENT AND OF THE WRIT OF REVIEW.

SECTIONS 1-13. — Writs of Error.

SECTIONS 14-20. — Motions and Petitions to Vacate Judgment.

SECTIONS 21-37. — Writs of and Petitions for Review.

WRITS OF ERROR.

Writs of error.
R. S. 112, § 10.
G. S. 146, § 1.
P. S. 187, § 1.

SECTION 1. Writs of error in civil and criminal cases shall issue as of course from and be returnable to and be heard and determined by the supreme judicial court.

Proceedings.
R. S. 112, § 15.
R. S. 146, § 18.
P. S. 187, § 15.
5 Met. 334.
141 Mass. 194.
168 Mass. 297.
170 Mass. 152.

SECTION 2 The proceedings upon writs of error, as to the assignment of errors, the scire facias, pleadings, judgment and all other matters not expressly provided for, shall be according to the course of the common law as modified by practice and usage in this commonwealth and by the general rules of the supreme judicial court.

Civil Cases.

Judgments,
etc., review-
able on writ
of error.
R. S. 82, § 20.
1840, 87, § 4.
G. S. 146, § 2.
P. S. 187, § 2.
10 Met. 172.
5 Cnsh. 611.

SECTION 3. A judgment in a civil action may be re-examined, reversed or affirmed upon a writ of error in the county in which it was rendered for any error in law or in fact, except as hereinafter provided. If the judgment is reversed, such judgment shall be rendered as the court below should have rendered.

10 Cnsh. 415.
3 Gray, 508.

9 Gray, 311.
4 Allen, 94.

152 Mass. 585.
154 Mass. 157.

155 Mass. 86.
164 Mass. 239.

1 SECTION 4. A judgment in a civil action shall not be reversed
 2 on a writ of error for error arising upon a plea or answer in abate-
 3 ment or for a defect of form which might by law have been amended ;
 4 nor by reason of a mistake relative to the venue of the action ;
 5 nor because the judgment is not in conformity with the pleadings,
 6 if it is in conformity with the verdict ; nor for any error in law if
 7 the defendant appeared and a verdict was rendered, unless it oc-
 8 curred after verdict. But the provisions of this section shall not
 9 prevent either party from assigning an error affecting the jurisdic-
 10 tion of the court.

Judgments
not review-
able on writ
of error.
R. S. 100, § 24.
1851, 233, §§ 114,
115.
1852, 312, §§ 77,
78.
G. S. 146, §§ 3, 4.
P. S. 187, § 3.
3 Met. 372.
7 Met. 590.
13 Gray, 392.
171 Mass. 563.
176 Mass. 48.

1 SECTION 5. A judgment in a civil action shall not be reversed
 2 upon a writ of error, unless the writ is sued out within six years
 3 after the entry of the judgment ; but if an action of contract or
 4 writ of scire facias has been brought on the judgment, the writ of
 5 error may be sued out at any time within six years after the bring-
 6 ing of such action or writ.

Limitation of
time for writ
of error.
1805, 35.
R. S. 112, §§ 19,
20.
G. S. 146, §§ 5, 6.
P. S. 187, § 4.

1 SECTION 6. A writ of error shall not stay or supersede the
 2 execution, unless the plaintiff in error or a person in his behalf
 3 gives bond to the defendant, with one or more sureties, conditioned
 4 that the plaintiff shall prosecute his writ to effect, and shall pay
 5 and satisfy such judgment as may be rendered thereon. The suffi-
 6 ciency of the sureties and the amount of the bond shall be deter-
 7 mined by a justice of the supreme judicial court or by the clerk
 8 from whose office the writ issued.

Stay of execu-
tion.
R. S. 112, §§ 11,
12.
G. S. 146, §§ 7, 8.
P. S. 187, § 5.
1 Mass. 156.

1 SECTION 7. Such bond shall be filed in the clerk's office for the
 2 use of the defendant in error and no execution shall be thereafter
 3 issued upon the judgment while the writ of error is pending. If
 4 execution has been already issued, the clerk shall make an entry
 5 of the issuing of the writ of error and of the filing of the bond,
 6 and issue a certificate thereof ; and after notice of such entry to the
 7 officer holding the execution, all further proceedings thereon shall
 8 be stayed.

Filing of bond,
and its effect.
R. S. 112, § 13.
G. S. 146, § 9.
P. S. 187, § 6.

1 SECTION 8. The prevailing party shall be entitled to costs and,
 2 if the judgment is affirmed, the court shall award to the defendant
 3 in error damages for his delay at a rate of not less than six nor
 4 more than twelve per cent a year on the amount recovered by the
 5 former judgment ; and may award him double costs.

Costs and
damages.
R. S. 112, § 14.
G. S. 146, § 10.
P. S. 187, § 7.
4 Mass. 436.
6 Mass. 4.

Criminal Cases.

1 SECTION 9. A judgment in a criminal case may be re-examined
 2 and reversed or affirmed upon a writ of error for any error in law
 3 or in fact. 1832, 130, § 5. R. S. 82, § 31. 1840, 87, § 4. 1842, 54.
 G. S. 146, § 11. P. S. 187, § 8. 3 Cush. 212. 158 Mass. 164.

Judgments,
etc., review-
able in crim-
inal cases on
writs of error.

1 SECTION 10. Writs of error in such cases may be brought at
 2 any time after judgment and may be entered in any county. After
 3 the writ has been returned, the court shall examine the case with-
 4 out delay ; but may adjourn the examination from time to time.

Venue, etc., of
writ.
1842, 54, §§ 1, 2.
G. S. 146, § 12.
P. S. 187, § 9.
5 Met. 334.

Writ of error
in capital case.
R. S. 112, §§ 16-
18.
G. S. 146, §§ 13-
15.
P. S. 187, §§ 10-
12.

SECTION 11. A writ of error upon a judgment for a capital crime shall not issue, unless allowed by a justice of the supreme judicial court after notice to the attorney general or other attorney for the commonwealth; but a writ of error upon a judgment in any other criminal case shall issue as of course, but it shall not stay or delay the execution of the judgment or sentence, unless by an express order of a justice of the supreme judicial court, who may make a further order for the custody of the plaintiff in error or for releasing him on bail.

Proceedings
upon reversal
of judgment.
1842, 54, § 3.
1851, 87.
G. S. 146, §§ 16,
17.
P. S. 187, §§ 13,
14.

SECTION 12. If a final judgment is reversed by reason of error in the sentence, such judgment shall be rendered in the case as the court below should have rendered, or it may be remanded for that purpose to said court. If the plaintiff in error is discharged, the costs shall be paid by the county in which he was convicted.

2 Met. 419.

167 Mass. 11.

172 Mass. 264.

177 U. S. 155.

Validity of
conviction not
affected by
age.
1882, 266.
146 Mass. 489.

SECTION 13. Upon a writ of error or other proceeding to reverse or avoid a conviction of a crime or to obtain the discharge of a person who is held in custody thereunder, the fact that he was under the age of seventeen years at the time of the conviction shall not affect the validity of the conviction nor entitle the person to be discharged.

MOTIONS AND PETITIONS TO VACATE JUDGMENT.

Vacating judg-
ment.
1875, 33.
P. S. 187, § 17.
1893, 396, § 33.
1895, 234, § 1.
118 Mass. 61.
145 Mass. 18.
154 Mass. 157.

SECTION 14. If final judgment has been rendered in a civil action in the supreme judicial court, the superior court or a police, district or municipal court, the court in which the judgment was entered may, within three months thereafter, if the execution has not been satisfied in whole or in part, vacate such judgment, upon the motion in writing of the prevailing party, and dispose of the case as if such judgment had not been entered. Such motion shall be filed in the case and, except by special order of the court, no bond shall be required.

— on petition
of either party.
1875, 33.
P. S. 187, §§ 17,
18.
1893, 396, § 33.
1895, 234, § 2.
141 Mass. 20.
151 Mass. 321.
155 Mass. 581.
158 Mass. 381.
165 Mass. 238.
175 Mass. 568.

SECTION 15. If a final judgment has been entered in any of the courts named in the preceding section and the execution has not been satisfied in whole or in part, either party, or any one or more of several plaintiffs or defendants, within one year thereafter may file in the court in which such judgment was rendered a petition to vacate such judgment. In the supreme judicial court or in the superior court, the petition shall be filed in the county in which the judgment was entered.

Order of notice
and super-
sedeas.
1875, 33.
P. S. 187, § 18.
1893, 396, § 33.
1895, 234, § 3.
168 Mass. 445.

SECTION 16. The court may thereupon order notice thereof returnable when, and to be served as, the court orders, and may issue a stay or supersedeas of an execution issued on such judgment and an order for a return thereof with a certificate of the proceedings thereon. Upon the hearing of such petition, the court may vacate such judgment, and dispose of the case as if the judgment had not been entered.

Bond.
1875, 33.
P. S. 187, §§ 19,
39.

SECTION 17. The petitioner shall, except as hereinafter provided, before judgment is vacated under such petition and before

3 execution is stayed or superseded, give bond to the adverse party
4 with security approved by the court, conditioned, if the obligor is
5 the prevailing party, that if final judgment shall be thereafter ren-
6 dered for the obligee, the obligor shall pay his costs and, if the
7 obligee is the prevailing party, that if the judgment is not vacated
8 on said petition, the obligor shall satisfy said judgment and all
9 costs accrued on any execution issued thereunder, and that if it is
10 so vacated, he shall satisfy the execution that shall issue in favor
11 of the obligee on any judgment thereafter rendered in said action,
12 or if a special judgment shall be entered in favor of the obligee in
13 accordance with the provisions of section twenty-six of chapter one
14 hundred and seventy-seven, he will pay to the plaintiff within
15 thirty days after the entry of such judgment the amount for which
16 said judgment shall be entered.

1888, 405, § 3.
1893, 336, § 33.
1895, 234, § 4.
166 Mass. 359.
161 Mass. 301.

1 SECTION 18. If the petitioner had no actual knowledge before
2 the judgment was entered that the action was pending against him
3 and there was no attachment of property in the original action, the
4 judgment may be vacated and the execution stayed or superseded
5 without security; but if there was such attachment, the amount of
6 the bond shall be fixed at the actual value of the property attached,
7 as agreed upon by the parties or as determined by the court upon
8 a summary hearing after notice to the adverse party.

Judgment
vacated with
out security,
when.
1882, 249.
1895, 234, § 5.

1 SECTION 19. The court may impose costs or terms upon either
2 party to a motion or petition to vacate a judgment.

Terms on
petitioner.
1875, 33.

P. S. 187, § 19.

1895, 234, § 6.

1 SECTION 20. The liability upon an attachment made, bond
2 given or bail taken in the original action shall not continue after
3 the original judgment has been vacated, except that if a judgment is
4 vacated under the provisions of section fourteen within thirty days
5 after the entry thereof, such liability shall, if a subsequent judg-
6 ment is rendered, continue during such time thereafter as it would
7 have continued upon the original judgment had it not been vacated.

Discharge of
attachment,
bond, &c.,
after judgment
vacated.
1875, 33.
P. S. 187, § 20.
1895, 234, § 7.
161 Mass. 301.

WRITS OF AND PETITIONS FOR REVIEW.

1 SECTION 21. If judgment is rendered, as provided in chapter
2 one hundred and seventy, upon the default of a defendant upon
3 whom service has not been made by reason of his being out of the
4 commonwealth or by reason of his residence being unknown, he
5 may, within one year after the judgment, as of right and without
6 any petition therefor, take a writ of review out of the court in
7 which the judgment was rendered.

Writ of review
as of right.
1758-9, 10, § 8.
1786, 66.
1817, 85.
1820, 53.
R. S. 92, § 4;
99, § 17.
G. S. 146, § 20.
P. S. 187, § 21.
1895, 234, § 8.
4 Allen, 94.

104 Mass. 367.

165 Mass. 238.

1 SECTION 22. After the entry of final judgment in a civil action
2 in the supreme judicial court, the superior court or a police, dis-
3 trict or municipal court, the court in which the judgment was en-
4 tered may, upon petition, grant a writ of review. After the entry
5 of final judgment by a trial justice, the superior court may, upon
6 petition, grant a writ of review. If judgment was rendered in
7 the absence of the petitioner and without his knowledge, the peti-
8 tion shall be filed within one year after the petitioner first had

— upon peti-
tion.
C. L. 152, § 1;
206, § 3.
1701-2, 6, § 1.
1753-4, 42, § 1.
1756-7, 28, § 1.
1786, 66, § 1.
1788, 11, §§ 1-3.
1791, 17, §§ 2, 3.
1817, 85.
1822, 61.
R. S. 92, § 5;
99, §§ 18-20, 26-
28.

1852, 126.
G. S. 146, §§ 21,
24.
P. S. 187, §§ 22,
25.
1893, 396, § 33.
1895, 234, § 9.
14 Mass. 360.

notice of the judgment; otherwise, within one year after the judgment was rendered. In the supreme judicial court or in the superior court, the petition shall be filed in the county in which the judgment was entered.

19 Pick. 60.

1 Met. 288.

3 Gray, 136, 415.

10 Gray, 92.

8 Allen, 23, 368.

104 Mass. 367.

111 Mass. 281.

114 Mass. 54.

116 Mass. 313.

117 Mass. 281.

126 Mass. 523.

135 Mass. 122.

147 Mass. 240.

151 Mass. 17.

155 Mass. 581.

157 Mass. 306.

164 Mass. 239.

165 Mass. 234, 238.

189 Mass. 157.

170 Mass. 360.

Order of
notice and
supersedeas.
1732-3, 13, § 1.
1751-2, 13, § 1.
R. S. 99, § 21.
G. S. 146, § 22.
1875, 33.

SECTION 23. After the filing of the petition for a writ of review, the court may order notice thereof returnable when, and to be served as, the court orders, and may issue a stay or supersedeas of an execution on such judgment and an order for the return thereof to the court with a certificate of the proceedings thereon.

P. S. 187, §§ 18, 23.

1895, 234, § 10.

Bond.
1732-3, 13, § 1.
1751-2, 13, § 1.
1786, 66, §§ 1,
5, 6.
1817, 85.
R. S. 99, §§ 12,
22, 23.
G. S. 146, § 38.
1875, 33, 68, § 4.
P. S. 187, §§ 19,
39.
1888, 405, § 3.
1895, 234, § 11.
10 Allen, 346.
14 Allen, 66.
108 Mass. 356.
111 Mass. 279.
118 Mass. 470.

SECTION 24. The petitioner for a writ of review shall, except as hereinafter provided, before execution is stayed or superseded, give bond to the adverse party with security approved by the court, conditioned that if a writ of review is not granted the obligor shall satisfy the judgment originally entered and all costs accrued on any execution issued thereon, and that if a writ of review is granted, he will forthwith prosecute a review to final judgment and will satisfy such execution as may be issued against him on the review, or if a special judgment shall be entered against him in accordance with the provisions of section twenty-six of chapter one hundred and seventy-seven, he will pay to the plaintiff within thirty days after the entry of such judgment the amount for which said judgment shall be entered.

Supersedeas
without secu-
rity, when.
1895, 234, § 12.

SECTION 25. If the petitioner had no actual knowledge before the judgment was entered that the action was pending against him and there was no attachment of property in the original action, the execution may be stayed or superseded without security; but if there was such attachment, the amount of the bond shall be fixed at the actual value of the property attached, as agreed upon by the parties or as determined by the court upon a summary hearing after notice to the adverse party. Except as provided in this and the preceding section, the execution shall not be stayed or superseded by the writ of review.

Terms.
1788, 11, § 5.
R. S. 99, § 24.

SECTION 26. The court may grant a writ of review upon terms and if the review is not granted may impose costs.

G. S. 146, § 22.

1875, 33.

P. S. 187, § 19.

1895, 234, § 13.

Writ of re-
view, how and
when sued out.
1701-2, 6, § 1.
1788, 11, §§ 1, 3.
1791, 17, §§ 2, 3.
1822, 61.
R. S. 99, § 2.
G. S. 146, § 25.

SECTION 27. The writ of review shall be sued out within three months after the order granting the petition: otherwise, such order and any stay or supersedeas previously ordered in the proceedings shall be thereby vacated and the original judgment shall be in full force.

P. S. 187, § 26.

1895, 234, § 14.

148 Mass. 562.

163 Mass. 528.

— form of.
R. S. 99, § 3.
G. S. 146, § 26.
P. S. 187, § 27.
1895, 234, § 15.

SECTION 28. It shall not be necessary to recite at length the declaration and other proceedings in the original action, but the form of writ of review shall be substantially as follows: —

Summon A to answer to B in the review of an action of contract, (tort or replevin) brought by said A against said B, in which action said A by the consideration of the justices of our court, held at C within and for our said county of M on the day of , recovered judgment against said B for the sum of dollars, debt (or damages), dollars costs, which judgment said B says is wrong and erroneous.

4 Or the former judgment may be briefly described in any manner
5 provided by the rules of the courts.

1 SECTION 29. If the original judgment was entered by a trial
2 justice, the plaintiff in review shall file in the superior court certi-
3 fied copies of the writ, judgment and all proceedings in the former
4 action, and the originals or copies of all depositions and other
5 papers used and filed therein.

P. S. 187, § 28. 1895, 234, § 16.

Copy of judgment, etc., by trial justice to be filed.
1701-2, 6, § 1.
1786, 66, § 1.
1817, 85.
R. S. 99, § 4.
G. S. 146, § 27.

1 SECTION 30. The writ shall be served in the same manner as an
2 original writ, except that if the defendant is not an inhabitant of
3 the commonwealth, or is not found therein, it may be served on
4 the person who appeared as his attorney in the original action,
5 and the court may continue the case to enable the absent party to
6 appear and answer.

Service of writ
1732-3, 13, § 2.
1786, 66, §§ 5, 7.
1797, 50, § 2.
R. S. 99, § 5.
G. S. 146, § 28.
P. S. 187, § 29.
1895, 234, § 17.

1 SECTION 31. If the writ is sued out by the original plaintiff, he
2 may cause the defendant's goods and estate to be attached as they
3 might have been in the original action, and for this purpose the
4 writ of review may be so framed as to require an attachment in the
5 common form, and that the defendant be summoned. An attach-
6 ment made, bond given or bail taken in the original suit shall not
7 be held to satisfy the judgment on the review.

Attachment on writ.
R. S. 99, §§ 6, 12.
G. S. 146, § 29.
P. S. 187, § 30.
1895, 234, § 18.
161 Mass. 301.

1 SECTION 32. If an issue of fact was joined in the original action,
2 the case shall be tried on the review upon the same issue, unless the
3 court allows such amendments of the original pleadings by either
4 party as might have been allowed in the original action.

1895, 234, § 19. 3 Cush. 381. 3 Gray, 415. 117 Mass. 291.

Procedure upon joinder of issue.
R. S. 99, § 7.
G. S. 146, § 30.
P. S. 187, § 31.

1 SECTION 33. If judgment in the original action was rendered
2 without a joinder of issue, the parties shall plead or answer upon
3 the review in like manner as they might have done in the original
4 action, and the cause shall be tried upon any issue of fact or law
5 joined upon such pleadings or answer.

1895, 234, § 20. 8 Cush. 299.

— upon non-joinder of issue.
1701-2, 6, § 1.
1786, 66, § 2.
1817, 85.
R. S. 99, §§ 8, 9.
G. S. 146, § 31.
P. S. 187, § 32.

1 SECTION 34. Judgment shall be given upon the review as the
2 merits of the case upon the law and the evidence require. If the
3 amount recovered by the plaintiff in the original action is reduced
4 on the review, the original defendant shall have judgment and
5 execution for the difference, with costs; or, if the former judg-
6 ment has not been satisfied, one judgment may be set off against
7 the other, and an execution issued for the balance. If the original
8 plaintiff recovers a greater amount than was awarded to him in
9 the original action, he shall have judgment and execution for the
10 excess.

117 Mass. 281. 133 Mass. 587.

Judgment upon review.
1720-1, 11.
1786, 66, §§ 2, 3.
1788, 11, § 4.
1817, 85.
R. S. 99, §§ 10, 13, 14.
G. S. 146, §§ 32, 34.
P. S. 187, §§ 33, 35.
1895, 234, §§ 21, 23.
19 Pick. 60.
11 Met. 266.
5 Allen, 582.

Costs.
1786, 66, § 4.
1788, 11, § 5.

SECTION 35. The prevailing party shall recover costs unless the court in granting the review otherwise orders. 1
2

1817, 85.

G. S. 146, § 33.

1895, 234, § 22.

11 Met. 266.

R. S. 99, § 11.

P. S. 187, § 34.

4 Mass. 614.

133 Mass. 587.

Procedure in
replevin, etc.
R. S. 99, § 15.
G. S. 146, § 35.
P. S. 187, § 36.
1895, 234, § 24.

SECTION 36. In actions of replevin and in actions in which a set-off is filed, the original defendant shall be considered, relative to everything contained in this chapter, as a plaintiff in other actions, so far as respects any damages awarded to him either in the original action or upon the review. 1
2
3
4
5

One of several
defendants
may review.
1786, 66, §§ 3-6.
1817, 85.
R. S. 99, § 16.
G. S. 146, § 36.
P. S. 187, § 37.
1895, 234, § 25.

SECTION 37. If judgment was recovered against several defendants in the original action, one or more of them may review in like manner as if he or they had been the only defendants, and if the amount recovered in the original action is increased or reduced, the court shall make such order as will carry into effect the two judgments according to the rights of all parties. 1
2
3
4
5
6

CHAPTER 194.

OF REFERENCE TO ARBITRATION.

Submission of
controversies
to arbitration.
R. S. 114, § 1.
G. S. 147, § 1.

SECTION 1. Controversies which might be the subject of a personal action at law or of a suit in equity may be submitted to the decision of one or more arbitrators, as provided in this chapter. 1
2
3

P. S. 188, § 1.
8 Mass. 1.

2 Gray, 407.
13 Gray, 298.

113 Mass. 67.
119 Mass. 490.

140 Mass. 508.
152 Mass. 416.

— form of
agreement of.
1786, 21, § 1.
R. S. 114, § 2.
G. S. 147, § 2.
1863, 157, § 2.
P. S. 188, § 2.
1899, 178, § 5.
20 Pick. 480.
6 Cush. 108.
10 Cush. 114.
8 Gray, 425.
4 Allen, 17.
100 Mass. 319.
101 Mass. 359.
113 Mass. 67.
152 Mass. 416.

SECTION 2. The parties shall appear in person or by their lawful agents or attorneys before a justice of the peace or special commissioner and shall there sign and acknowledge an agreement in substance as follows:— 1
2
3
4

Know all men that _____, of _____, and _____, of _____, hereby agree to submit the demand, a statement whereof is hereto annexed, (and all other demands between them, as the case may be,) to the determination of _____ and _____, the award of whom, or of a majority of whom, being made and reported within one year from this day to the superior court for the county of _____, the judgment thereon shall be final; and if either of the parties neglects to appear before the arbitrators, after due notice given to him of the time and place appointed for hearing the parties, the arbitrators may proceed in his absence. Dated this _____ day of _____ in the year _____.

The justice or special commissioner, either of whom may be one of the arbitrators, shall annex to the agreement a certificate, in substance as follows:— 5
6
7

ss. _____ . Then the above-named _____ and _____ personally appeared, (or the above-named _____ personally, and said _____ by _____, his attorney, appeared, as the case may be,) and acknowledged the above instrument by them signed to be their free act; before me _____, Justice of the Peace or Special Commissioner.

Statement of
specific de-
mands.

SECTION 3. If a specific demand is submitted to the exclusion of others, it shall be set forth in the statement annexed to the 1
2

3 agreement; otherwise, it shall not be necessary to annex any state-
4 ment of a demand, and the submission may be of all demands be-
5 tween the parties or of all demands which either has against the
6 other. The submission may be varied in this respect in any other
7 manner, according to the agreement of the parties.

R. S. 114, § 3.
G. S. 147, § 4.
P. S. 188, § 3.

1 SECTION 4. An agreement to submit all demands shall include
2 only such as might be the subject of a personal action at law or of a
3 suit in equity.

G. S. 147, § 3.

P. S. 188, § 4.

Effect of agree-
ment to submit
all demands.
R. S. 114, § 4.

1 SECTION 5. The time within which the award shall be made and
2 reported may be varied according to the agreement of the parties,
3 but no award made after the time fixed by the agreement shall
4 have any legal effect, unless made upon a recommitment by the
5 court to which it is reported.

144 Mass. 165.

Limit of time
for making
award.
R. S. 114, § 6.
G. S. 147, § 5.
P. S. 188, § 5.
13 Gray, 302.
4 Allen, 17.

1 SECTION 6. Neither party may revoke the submission without
2 the consent of the other; and if either neglects to appear after due
3 notice, the arbitrators may hear and determine the cause *ex parte*.

G. S. 147, § 6.

P. S. 188, § 6.

Revocation of
submission.
Hearing *ex*
parte.
R. S. 114, § 5.

1 SECTION 7. All the arbitrators shall meet and hear the parties,
2 but an award by a majority of them shall be valid, unless the con-
3 currence of all is expressly required in the submission.

G. S. 147, § 7.

P. S. 188, § 7.

113 Mass. 67.

148 Mass. 367.

Hearing by all
the arbitrators,
but award by
majority.
R. S. 114, § 11.

1 SECTION 8. The award shall be delivered by one of the arbi-
2 trators to the court designated in the agreement, or shall be enclosed
3 and sealed by the arbitrators and transmitted to the court, and shall
4 remain sealed until opened by the clerk.

P. S. 188, § 8.

119 Mass. 489.

158 Mass. 69.

Award to be
returned into
court.
1786, 21, § 3.
R. S. 114, § 7.
G. S. 147, § 8.

1 SECTION 9. The award may be returned at any time limited in
2 the submission, and the parties shall attend without any express
3 notice for that purpose; but the court may require actual notice to
4 be given to either party before it acts upon the award.

153 Mass. 361.

Proceedings
upon such
return.
R. S. 114, § 10.
G. S. 147, § 9.
P. S. 188, § 9.
5 Met. 287.

1 SECTION 10. The court shall have cognizance of the award in the
2 same manner, and may proceed thereon, as if it had been made by
3 referees appointed by a rule of court, and may accept, reject or
4 recommit it to the same arbitrators for a rehearing. When accepted
5 and confirmed by the court, judgment shall be rendered thereon as
6 upon a like award by referees.

6 Allen, 333.
106 Mass. 365.

109 Mass. 306.
121 Mass. 150.

123 Mass. 129,
190, 552, 587.

135 Mass. 26.
151 Mass. 279.

Powers of
court relative
to award.
1786, 21, § 3.
R. S. 114, §§ 8, 9.
G. S. 147, § 10.
P. S. 188, § 10.
1 Cush. 389.
11 Cush. 549.
4 Allen, 20.

1 SECTION 11. If there is no provision in the submission relative
2 to costs and expenses, the arbitrators may make an award relative
3 thereto, including compensation for their own services; but the
4 court may reduce the charge for compensation.

153 Mass. 361.

Payment of
costs, ex-
penses, etc.
R. S. 114, § 12.
G. S. 147, § 11.
P. S. 188, § 11.
135 Mass. 26.

1 SECTION 12. An appeal founded on matter of law apparent upon
2 the record shall be allowed from any order or judgment of the su-
3 perior court on an award made under the provisions of this chapter;

Appeal and
writ of error.
1791, 42.
R. S. 114, § 13.
G. S. 147, § 12.

P. S. 188, § 12.
106 Mass. 365.
129 Mass. 158.

or a party aggrieved may bring a writ of error for any error in law 4
or fact as in other cases. The supreme judicial court shall thereupon 5
render such judgment as the court below ought to have rendered. 6

Fees of justice,
etc.
1786, 21, § 2.

R. S. 114, § 14.
G. S. 147, § 13.
P. S. 188, § 13.
1899, 178, § 6.

SECTION 13. The fees of the justice or special commissioner for 1
the agreement of submission and acknowledgment shall be forty 2
cents, and the fees in court shall be the same as for like services 3
relative to an award made under a rule of court. 4

CHAPTER 195.

OF THE IMPROVEMENT OF MEADOWS AND SWAMPS.

SECTIONS 1-16. — Improvement of Low Land.

SECTIONS 17-25. — Construction of Roads, etc., to Swamps, etc.

IMPROVEMENT OF LOW LAND.

Improvement
of low land.
1702, 11, § 1.
1795, 62, § 1.
R. S. 115, § 1.
G. S. 148, § 1.
P. S. 189, § 1.
16 Gray, 428.
148 Mass. 1.
154 Mass. 582.

SECTION 1. If it is necessary or useful to drain or flow a 1
meadow, swamp, marsh, beach or other low land which is held by 2
several proprietors or to remove obstructions in rivers or streams 3
leading therefrom, such improvements may be made as hereinafter 4
provided. 5

Petition.
1702, 11, § 1.
1795, 62, § 1.
R. S. 115, § 2.
G. S. 148, § 2.
1860, 387.
1876, 228.
P. S. 189, § 2.
11 Met. 321.
119 Mass. 583.

SECTION 2. Such proprietors, or a majority in interest, either 1
in value or area, may file a petition in the superior court for the 2
county in which the land or any part thereof lies, setting forth the 3
proposed improvements and the reasons therefor. The court shall 4
thereupon cause notice of the petition to be given in such manner 5
as it may order to any proprietors who have not joined in the 6
petition. In the county of Dukes County the probate court shall 7
have concurrent jurisdiction of such petition and parties shall have 8
therein the same rights of appeal and exception as in the superior 9
court. 10

Commission-
ers, appoint-
ment of.
1702, 11, § 1.
1795, 62, § 1.
R. S. 115, §§ 3, 4.
G. S. 148, § 3.
P. S. 189, § 3.

SECTION 3. If, upon a hearing, the court finds that the improve- 1
ments proposed will be for the general advantage of the propri- 2
etors, it may appoint three, five or seven commissioners, who shall be 3
sworn to the faithful performance of their duties, shall view the 4
land, notify parties concerned, hear them as to the best manner of 5
making the improvements and prescribe the measures to be adopted 6
for such purpose. 7

— duties and
powers of.
1795, 62, § 1.
R. S. 115, § 5.
G. S. 148, § 4.
P. S. 189, § 4.
22 Pick. 422.

SECTION 4. The commissioners shall, according to the peti- 1
tion and the order of the court, cause dams or dikes to be erected 2
on the land at such places and in such manner as they shall direct, 3
may order the land to be flowed thereby for such periods of each 4
year as they shall consider most beneficial and may cause ditches 5
to be opened on the land and obstructions in any rivers or streams 6
leading therefrom to be removed. They shall meet from time to 7
time as may be necessary to cause the work to be completed ac- 8
cording to their directions. 9

1 SECTION 5. They may employ suitable persons to erect the Commission-
2 dams or dikes or to perform the other work under their direction, powers of.
3 for such reasonable wages as they may agree upon, unless the pro- 1795, 62, § 1.
4 prietors themselves do the same in such time and manner as the R. S. 115, § 6.
5 commissioners shall order. G. S. 148, § 5.
P. S. 189, § 5.

1 SECTION 6. They shall apportion and assess the whole charge Assessment of
2 and expense of the improvements and of executing the commission expenses.
3 upon the proprietors of the land, according to the quantity, quality 1702, 11, § 1.
4 and situation of each person's part thereof and to the benefit that he 1795, 62, § 2.
5 will derive from the improvements. R. S. 115, § 7.
G. S. 148, § 6.
P. S. 189, § 6.

1 SECTION 7. They may appoint a collector of the assessments, Collection of
2 and shall give him a warrant to collect, pay over and account for assessments.
3 the same to such person as they may appoint. The collector shall 1702, 11, § 1.
4 have the same power and proceed in like manner in collecting the 1795, 62, § 2.
5 assessments as is provided for the collection of town taxes. R. S. 115, § 8.
G. S. 148, § 7.
P. S. 189, § 7.
5 Met. 360.
4 Gray, 150.

1 SECTION 8. If the collector neglects, for twenty days after being Same subject.
2 so required by the commissioners, to account for and pay over the 1795, 62, § 2.
3 money he has collected, he shall be liable to the commissioners in R. S. 115, § 9.
4 an action of contract for the whole amount committed to him for G. S. 148, § 8.
5 collection : and the money so recovered, after deducting the expenses P. S. 189, § 8.
6 of recovery, shall be applied and accounted for by the commission-
7 ers as if it had been collected and paid over by the collector pursuant
8 to his warrant.

1 SECTION 9. The compensation of the commissioners shall be Compensation.
2 determined by the court, and that of the collector shall be agreed 1702, 11, § 2.
3 upon between him and the commissioners. 1795, 62, § 3.

R. S. 115, § 10.

G. S. 148, § 9.

P. S. 189, § 9.

1 SECTION 10. The commissioners shall, as soon as may be after Commission-
2 the completion of the business, make a return to the court of their ers' return.
3 doings under the commission, including an account of all money 1795, 62, § 3.
4 assessed and collected by their order and of the disbursement R. S. 115, § 11.
5 thereof. G. S. 148, § 10.
P. S. 189, § 10.
7 Pick. 207.

1 SECTION 11. If the commissioners find that a part of the land is Apportion-
2 held by a tenant for life or years, they shall apportion and assess ment between
3 the expense upon the tenant and the remainderman or reversioner, tenant and re-
4 unless the parties agree on an apportionment : and every such mainderman.
5 tenant, remainderman and reversioner shall be considered a pro- 1795, 62, § 4.
6 prietor. R. S. 115, § 12.
G. S. 148, § 11.
P. S. 189, § 11.

1 SECTION 12. A mortgagor or mortgagee in possession shall Land subject
2 be considered a proprietor, and all amounts paid by a mortgagee to mortgage.
3 by order of the commissioners shall be allowed to him under the 1795, 62, § 4.
4 provisions of section twenty of chapter one hundred and eighty- R. S. 115, § 13.
5 seven. G. S. 148, § 12.
P. S. 189, § 12.

1 SECTION 13. If the commissioners find it necessary or expedient Commissioners
2 to reduce or raise the water to obtain a view of the land or for the may make or
open dams, etc.

1745-6, 16, §§ 1, 4. more convenient or expeditious removal of obstructions, they may 3
 1795, 62, § 5. open the flood gates of any mill, or make other needful passages 4
 R. S. 115, § 14. through or around the dam thereof, or erect a temporary dam on 5
 G. S. 148, § 13. the land of a person who is not a party to the proceedings, and may 6
 P. S. 189, § 13. maintain such dam or passages for the water as long as may be nec- 7
 essary for such purposes. 8

Damages. SECTION 14. Damages so caused shall be determined by the 1
 1745-6, 16, § 2. commissioners, unless agreed on between them and the parties, and 2
 1795, 62, § 5. shall be paid by the commissioners out of the money to be assessed 3
 R. S. 115, § 15. and collected by them as before provided. 4
 G. S. 148, § 14.
 P. S. 189, § 14.

Notice before erecting or opening dam, etc. SECTION 15. The commissioners, before proceeding to open flood 1
 R. S. 115, § 18. gates, or to make other passages for water through or around a dam 2
 G. S. 148, § 17. or to erect a dam on the land of a person who is not a party to the 3
 P. S. 189, § 15. proceedings, shall give him reasonable notice in writing of their in- 4
 1885, 384, § 5. tention. If such person appeals from their decision and gives notice 5
 in writing of his appeal to the commissioners or to any of them, 6
 they shall suspend all proceedings upon his land until the appeal is 7
 determined, if it is entered at the return day next after the expira- 8
 tion of seven days from the time of claiming the same. 9

Appeal. SECTION 16. If a party to the proceedings or a person otherwise 1
 1702, 11, § 4. interested therein or affected thereby is aggrieved by any doings of 2
 1745-6, 16, § 4. the commissioners, he may enter an appeal in the court in which the 3
 1795, 62, § 6. petition was filed at the return day next following that at which 4
 R. S. 115, §§ 16, 17. the return of the commissioners was filed; and the court may affirm, 5
 G. S. 148, §§ 15, 16. reverse or alter any adjudication or order of the commissioners, and 6
 P. S. 189, §§ 16, 17. may make any appropriate order. Questions of fact arising upon 7
 1885, 384, § 5. the appeal shall, upon motion of either party, be tried by a jury in 8
 11 Met. 321. such manner as the court orders. 9

CONSTRUCTION OF ROADS, ETC., TO SWAMPS, ETC.

Roads, etc., to swamps, etc. SECTION 17. A city, town, person or corporation owning low 1
 1855, 104, § 1. land, ponds, swamps, quarries, mines or mineral deposits, which, 2
 G. S. 148, § 19. on account of adjacent land belonging to other persons or occupied 3
 P. S. 189, § 19. as a highway, cannot be approached, worked, drained or used in 4
 3 Allen, 7. the ordinary manner without crossing such land or highway, may 5
 construct roads, drains, ditches, tunnels and railways thereto as 6
 hereinafter provided. 7

Petition and bond. SECTION 18. The party which desires to make such improvements 1
 1855, 104, § 2. shall file a petition therefor with the county commissioners for the 2
 G. S. 148, § 20. county in which the land lies, setting forth the names of the per- 3
 P. S. 189, § 20. sons interested, if known to the petitioner, and also in detail the 4
 nature of the proposed improvement and the situation of the ad- 5
 joining land. Such petition shall be accompanied by a bond satis- 6
 factory to said commissioners for the payment of the expenses to be 7
 incurred in the prosecution of the petition. 8

Notice. SECTION 19. The commissioners, at their first meeting after the 1
 1855, 104, § 3. filing of the petition and bond, shall order notice of the time and 2
 G. S. 148, § 21.
 P. S. 189, § 21.

3 place of meeting to consider the petition to be published once in
 4 each of three successive weeks in a newspaper, if any, published
 5 in the county; otherwise, in a newspaper published in an adjacent
 6 county. They shall also give notice thereof to the clerk of each
 7 city or town in which the land lies.

1 SECTION 20. If, after examination, inspection and a hearing, Powers of
 2 they find that the improvements prayed for are necessary, they commission-
 3 shall so lay out and establish the same as to do as little injury as ers.
 4 practicable, assess the damages sustained by the proprietor of the 1855, 104, § 4.
 5 adjacent land and apportion them among all parties to be benefited G. S. 148, § 22.
 6 according to the benefits each will receive. Such award shall be P. S. 189, § 22.
 7 conclusive upon the parties charged with such payment unless an
 8 appeal is taken within one year.

1 SECTION 21. A party who is aggrieved by the award may appeal Appeal.
 2 therefrom, and thereupon like proceedings shall be had as are pro- 1855, 104, § 6.
 3 vided in chapter forty-eight. G. S. 148, § 23.
 P. S. 189, § 23.

1 SECTION 22. If it is necessary to repair an improvement so Repairs of
 2 made, a majority of the persons benefited by it may cause such improvements.
 3 repairs to be made, and may compel contribution on the basis of 1855, 104, § 5.
 4 the award from each person benefited. G. S. 148, § 24.
 P. S. 189, § 24.

1 SECTION 23. If the land mentioned in section seventeen lies Petition to
 2 entirely in one city or town, the petition may be made to the mayor, etc., or
 3 mayor and aldermen or selectmen thereof, who shall proceed selectmen.
 4 thereon in all respects as above provided for county commissioners, 1857, 292, §§ 1, 3.
 5 except that they need not give notice to their city or town. Such G. S. 148, § 25.
 6 petition shall be filed in the office of the city or town clerk before P. S. 189, §§ 25,
 7 proceedings are had thereon: and the petition with the order or 26.
 8 award thereon shall be recorded in said office within two months
 9 after the order or award has been made.

1 SECTION 24. The mayor and aldermen or selectmen shall each Fees.
 2 receive two dollars for each day's services upon such petition and 1857, 292, §§ 3, 4.
 3 the city or town clerk shall receive for recording a petition, order or G. S. 148, § 27.
 4 award thereon the same fees as are provided for registers of deeds P. S. 189, § 27.
 5 by section twenty-nine of chapter two hundred and four.

1 SECTION 25. A party aggrieved by such order or award, or by Complaint to
 2 the refusal of the mayor and aldermen or selectmen to make such county com-
 3 order or award, may, within one year thereafter, complain to the missioners.
 4 county commissioners, who shall thereupon proceed in all respects 1857, 292, § 2.
 5 as though the petition had been originally filed with them. G. S. 148, § 28.
 P. S. 189, § 28.

CHAPTER 196.

OF MILLS, DAMS AND RESERVOIRS.

SECTIONS 1-38. — Mills and Mill-Dams.

SECTIONS 39-41. — Cranberry Land and Ice Ponds.

SECTIONS 42, 43. — Dams of Reservoir Corporations.

SECTIONS 44-50. — Safety of Reservoirs and Dams.

SECTIONS 51-62. — Repairing and Rebuilding Mills and Mill-Dams.

SECTIONS 63, 64. — Millers.

MILLS AND MILL-DAMS.

Erection of
mill and dam.
1795, 74, § 1.
R. S. 116, § 1.
G. S. 149, § 1.
P. S. 190, § 1.

SECTION 1. A person may, as hereinafter provided, erect and maintain a water mill and a dam to raise water for working it, upon and across any stream not navigable.

12 Allen, 89. 111 Mass. 464. 154 Mass. 581. 162 Mass. 422. 8 Cush. 113. 113 U. S. 9.

Dam not to
injure existing
mill, etc.
R. S. 116, § 2.
1841, 18.
G. S. 149, § 2.
P. S. 190, § 2.
17 Mass. 289.
10 Pick. 348.
22 Pick. 312.
23 Pick. 216.
10 Met. 359.
2 Allen, 355.
13 Allen, 10.
99 Mass. 480.
102 Mass. 463.

SECTION 2. Such dam shall not be erected to the injury of a mill lawfully existing above or below it on the same stream, nor to the injury of a mill-site on the same stream on which a mill or mill-dam has been lawfully erected and used, unless the right to maintain a mill on such last-mentioned site has been lost by abandonment or otherwise; nor shall a mill-dam be erected or raised to the injury of any such mill-site which has been occupied as such by the owner thereof, if, within a reasonable time after commencing such occupation, he completes and puts in operation a mill for the working of which the water of such stream is applied; nor shall a mill or dam be placed on the land of any person without such grant, conveyance or authority from the owner as would be necessary to convey land.

Height of
water, etc.
1795, 74, § 4.
R. S. 116, § 3.
G. S. 149, § 3.
P. S. 190, § 3.

SECTION 3. The height to which the water may be raised and the period of time for which it may be kept up in each year may be determined by a jury.

12 Met. 142. 4 Cush. 549. 7 Gray, 294. 142 Mass. 482.

Petition for
overflow, etc.,
of land.
1713-14, 15, § 2.
1795, 74, § 2.
1825, 103, § 2.
R. S. 116, §§ 4, 5.
1840, 87, § 2.
G. S. 149, §§ 4, 5.
P. S. 190, §§ 4, 5.
9 Pick. 62.
3 Met. 357.
10 Met. 203.
11 Met. 570.

SECTION 4. The owner or occupant of land which has been overflowed or otherwise injured by such dam may obtain compensation therefor if, within three years after such injury, he files a petition in the superior court for the county in which the land or any part thereof lies describing the land alleged to have been overflowed or injured and stating the damage sustained so that the record will show with sufficient certainty the matter heard and determined.

12 Met. 182. 6 Cush. 170, 303. 13 Gray, 146.
16 Gray, 43. 12 Allen, 455. 108 Mass. 160. 131 Mass. 337.
2 Allen, 350. 102 Mass. 458. 116 Mass. 138. 177 Mass. 46.

Notice.
1797, 63, § 1.
1824, 153, § 1.
R. S. 116, §§ 6, 7.
G. S. 149, §§ 6, 7.
P. S. 190, §§ 6, 7.

SECTION 5. Notice of the filing of such petition shall be given by an officer qualified to serve civil process by delivering, fourteen days at least before the return day thereof, to the owner or occupant of such mill or dam or leaving at his place of abode or, if he is not found within the commonwealth and has no place of abode therein, at the mill, an attested copy of the petition.

1 SECTION 6. The respondent may answer in bar that he has a
 2 right to maintain such dam, that the petitioner has no interest in
 3 the land alleged to be flowed or injured or any other matter which
 4 may show* that the petitioner cannot maintain the petition; but he
 5 shall not answer that the land described is not injured by the dam.
 6 If a plea or answer is filed, the subsequent pleadings and the trial
 7 shall be conducted as in an action at law.

16 Gray, 187.

123 Mass. 301.

Pleadings and
 trial.
 1797, 63, § 2.
 R. S. 116, §§ 8, 9.
 G. S. 149, §§ 8, 9.
 P. S. 190, §§ 8, 9.
 3 Mass. 184.
 6 Mass. 308.
 10 Met. 37.
 12 Cush. 259.
 4 Gray, 581.
 7 Gray, 294.
 9 Gray, 177.

1 SECTION 7. If the respondent is defaulted or if the issue is
 2 decided in favor of the petitioner, the court shall issue a warrant
 3 for a jury, as provided in chapter forty-eight, or the case may be
 4 tried by a jury in the superior court; and, if either party requires
 5 it, the jury shall, under the direction of the court, view the land
 6 alleged to be injured.

P. S. 190, §§ 11-13.

2 Cush. 341.

Jury.
 1713-14, 15, § 2.
 1795, 74, § 2.
 1797, 63, § 3.
 1817, 173.
 1824, 153, § 2.
 R. S. 116, §§ 11,
 13, 14.
 G. S. 149, §§ 11,
 13-15.

1 SECTION 8. The jury shall assess the amount of damages sus-
 2 tained within three years last preceeding the filing of the petition
 3 and to the date of their verdict, taking into consideration any
 4 damage caused by the dam to other land of the petitioner as well
 5 as the damage caused thereby to the land overflowed; and they
 6 shall also allow by way of set-off any benefit caused by such dam
 7 to the petitioner relative to his land. Upon the acceptance and
 8 recording of their verdict, judgment and execution shall be issued
 9 in accordance therewith.

162 Mass. 458.

16 Gray, 46.

108 Mass. 160.

2 Allen, 436.

113 Mass. 88.

Assessment of
 damages;
 judgment.
 1713-14, 15, § 3.
 1795, 74, § 2.
 1824, 153, § 3.
 1825, 106, § 2.
 R. S. 116, §§ 15-
 17.
 G. S. 149, §§ 16-
 18.
 P. S. 190, §§ 14-
 16.
 17 Pick, 58.

1 SECTION 9. If it is alleged in the petition that the dam has
 2 been raised to an unreasonable height, or that it ought not to be
 3 kept up and closed during the whole year, the jury shall determine
 4 by their verdict how much the dam shall be lowered and whether
 5 it shall be left open during any part of the year, and, if so, during
 6 what part.

Jury to deter-
 mine height of
 dam, etc.
 1795, 74, § 4.
 1829, 122, § 1.
 R. S. 116, § 18.
 G. S. 149, § 19.
 P. S. 190, § 17.
 12 Cush. 454.

1 SECTION 10. They shall also determine by their verdict what
 2 amount, if any, to be paid annually to the petitioner, would be
 3 a just and reasonable compensation for the damages that may be
 4 thereafter caused by the dam, so long as it is used in conformity
 5 with the verdict; and also what amount in gross would be a just
 6 and reasonable compensation for all damages thereafter to be caused
 7 by such use of the dam and for the right to maintain and use it
 8 forever as aforesaid.

— to assess
 annual and
 gross damages.
 1713-14, 15, § 2.
 1795, 74, § 2.
 1829, 122, § 2.
 R. S. 116, § 19.
 G. S. 149, § 20.
 P. S. 190, § 18.
 110 Mass. 298.

1 SECTION 11. The petitioner may, within three months after the
 2 verdict has been allowed and recorded, elect, by a writing filed in
 3 the clerk's office, to take the amount so awarded in gross, instead
 4 of such annual compensation.

P. S. 190, § 19.

4 Met. 603.

126 Mass. 458.

131 Mass. 572.

Petitioner
 may elect to
 take gross
 amount.
 1829, 122, § 2.
 R. S. 116, § 20.

1 SECTION 12. The owner or occupant of the mill or dam shall,
 2 within three months after such election, pay to the petitioner or
 3 secure to his satisfaction said amount with interest from the date of
 4 the verdict. After the expiration of said three months, and until

Such amount
 to be paid
 within three
 months.
 1829, 122, § 2.
 R. S. 116, § 21.
 G. S. 149, § 22.
 P. S. 190, § 20.

payment of said damages and interest, such owner or occupant shall 5
lose all benefit of the provisions of this chapter. 6

Annual com-
pensation if
no election.
1795, 74, § 3.
R. S. 116, § 22.
G. S. 149, § 23.
P. S. 190, § 21.

SECTION 13. If the petitioner does not within said three months 1
make his election, as aforesaid, he and all persons claiming under 2
him shall, so long as the dam is kept up and maintained, be entitled 3
to receive from the owner or occupant of the mill the annual com- 4
pensation so established by the jury, unless the amount is increased 5
or diminished upon a new petition, as hereinafter provided. 6

Lien on mill,
etc., for pay-
ment of dam-
ages.
R. S. 116, § 23.
G. S. 149, § 24.
P. S. 190, § 22.

SECTION 14. The person who is entitled to receive said annual 1
compensation or gross damages shall have a lien therefor, from the 2
time of the filing of the original petition, on the mill and mill- 3
dam with their appurtenances and on the land under and adjoining 4
the same and used therewith; but such lien shall not extend to any 5
amount due more than three years before the commencement of an 6
action therefor. 7

Action to re-
cover damages
and enforce
lien.
1713-14, 15, § 3.
1795, 74, § 3.
R. S. 116, § 24.
G. S. 149, § 25.
P. S. 190, § 23.
4 Met. 426.

SECTION 15. Such person may recover in an action of contract 1
in the superior court from the person who owns or occupies the 2
mill when the action is brought, the whole amount due and unpaid 3
for the three years last preceding, and costs, although the amount 4
recovered is less than twenty dollars. 5

10 Met. 359.

13 Met. 172.

4 Cush. 245.

2 Gray, 407.

Sale on execu-
tion.
R. S. 116, §§ 25,
26.
G. S. 149, §§ 26,
27.
P. S. 190, § 24.
123 Mass. 183.

SECTION 16. The execution issued on such judgment, if not 1
otherwise satisfied, may, within thirty days after judgment, be 2
levied on the land so subject to the lien; and the officer may there- 3
upon sell, in the manner provided for the sale of land on execu- 4
tion, such land or so much thereof as is necessary to satisfy the 5
execution and the expenses of the levy. Such sale shall be valid 6
against any claim which has accrued within the time covered by 7
the lien. 8

Right of re-
demption.
R. S. 116, § 27.
G. S. 149, § 28.
P. S. 190, § 25.

SECTION 17. A person who is entitled to the land so sold may 1
redeem the same within one year after the sale, upon paying to the 2
purchaser or to the person holding under him the amount paid there- 3
for, with interest at the rate of twelve per cent a year. 4

Costs, etc.
1713-14, 15, § 4.
1795, 74, §§ 2, 3.
1797, 63, § 4.
R. S. 116, §§ 10,
31, 32.
G. S. 149, §§ 10,
32, 33.
P. S. 190, §§ 10,
27.
2 Met. 506.

SECTION 18. The party prevailing upon such petition shall be 1
entitled to costs, except as otherwise provided. The court shall 2
determine the compensation of the person who presides at the trial 3
before a sheriff's jury, and of the officer who executes the warrant, 4
which shall, with the pay of the jurors and other like charges, be 5
advanced by the petitioner and taxed in his costs. 6

2 Gray, 497.

2 Allen, 436.

Other remedies
prohibited.
R. S. 116, § 30.
G. S. 149, § 31.
P. S. 190, § 28.
12 Met. 142.

SECTION 19. No action shall be maintained at common law for 1
the recovery of damages for the erection, maintenance or use of a 2
mill or mill-dam, if a remedy therefor is provided in this chapter. 3

2 Allen, 350.

12 Allen, 89.

Existing mills
and dams not
affected, ex-
cept, etc.

SECTION 20. The provisions of this chapter shall not, except as 1
herein expressly provided, affect the right to keep up, maintain 2

3 and use any lawfully existing water mill and mill-dam; but if
 4 the owner or occupant thereof makes any material change by rais-
 5 ing the dam or by altering the machinery or the manner of using
 6 the water, so as to cause additional damage to the land of another,
 7 it shall be considered a new mill or dam, in respect to such ad-
 8 ditional damage, and the remedy for compensation therefor shall be
 9 substantially the same as in the case of a new dam.

R. S. 116, § 28.
 G. S. 149, § 29.
 P. S. 190, § 29.
 97 Mass. 402.
 113 Mass. 235,
 238.

1 SECTION 21. If either party is dissatisfied with the annual com-
 2 pensation established by proceedings upon a petition under the
 3 provisions of this chapter or the corresponding provisions of earlier
 4 laws, a new petition may be filed for the increase or diminution
 5 of such compensation or for ascertaining the gross amount of the
 6 damages, and the proceedings shall be conducted substantially in the
 7 manner provided for an original petition; but if a petitioner has
 8 declined to accept gross damages which have been awarded to him,
 9 they shall not be again assessed within ten years thereafter.

Claim of new
 assessment.
 R. S. 116, § 33.
 G. S. 149, § 34.
 P. S. 190, § 30.
 9 Mass. 203.
 2 Met. 507.
 3 Met. 357.
 12 Cush. 200.
 126 Mass. 503.

1 SECTION 22. Such new petition may be maintained by and
 2 against either of the parties to the original petition or by and against
 3 a person lawfully holding under either of them, but it shall not be
 4 brought until the expiration of one month after the payment of
 5 the year last preceding was due.

Same subject.
 1795, 74, § 3.
 1799, 78, § 3.
 R. S. 116, §§ 34,
 35.
 G. S. 149, §§ 35,
 36.
 P. S. 190, § 31.

1 SECTION 23. The owner of the mill or dam may, within said
 2 month, offer in writing to the owner of the land any increase of said
 3 annual compensation; and if the owner of the land does not agree
 4 to accept such offer, but files a new petition to obtain an increase,
 5 he shall pay the costs, unless he recovers a greater annual com-
 6 pensation than was so offered.

Costs avoided
 by offer to pay
 increased
 compensation.
 1799, 78, § 1.
 R. S. 116, § 36.
 G. S. 149, § 37.
 P. S. 190, § 32.

1 SECTION 24. The owner of the land may within said month
 2 offer in writing to the owner of the mill or dam to accept a smaller
 3 amount than that established as said annual compensation; and if
 4 the owner of the mill or dam does not agree to pay such reduced
 5 compensation, but files a new petition to obtain a diminution
 6 thereof, he shall pay the costs, unless the annual compensation is
 7 reduced by the verdict to an amount less than the offer.

—by offer to
 accept smaller
 compensation.
 1799, 78, § 2.
 R. S. 116, § 37.
 G. S. 149, § 38.
 P. S. 190, § 33.

1 SECTION 25. Such offers may be made by or to the respective
 2 tenants or occupants of the land and of the mill or dam, in like
 3 manner and with like effect as if made by or to the respective
 4 owners, except that no agreement founded thereon shall bind said
 5 owners unless made with their consent.

Offer to ten-
 ants.
 1799, 78, §§ 1, 2.
 R. S. 116, § 38.
 G. S. 149, § 39.
 P. S. 190, § 34.

1 SECTION 26. If the offer so made by either party is accepted by
 2 the other, it shall establish the annual compensation to be there-
 3 after paid, as if it had been established by a judgment upon a new
 4 petition, if a memorandum of such offer and acceptance and of
 5 the agreement, signed by the respective parties or by persons
 6 authorized by them, is filed and recorded in the office of the clerk
 7 of the court in which the former judgment was rendered, with a
 8 note of reference on the record of the former judgment to the book
 9 in which the agreement is recorded.

Effect of ac-
 ceptance of
 offer.
 R. S. 116, § 39.
 G. S. 149, § 40.
 P. S. 190, § 35.

Verdict not to
bar new peti-
tion, when.
R. S. 116, § 40.
G. S. 149, § 41.
P. S. 190, § 36.
10 Mass. 72.

SECTION 27. If, upon a petition by the owner of the land, the jury return a verdict that he is not entitled to any annual compensation, the judgment thereon shall not bar a new petition for damages alleged to have arisen after such verdict and for compensation for damages thereafter sustained.

Tender to stop
costs.
1824, 153, § 4.
1825, 109, § 1.
R. S. 116, § 41.
G. S. 149, § 42.
P. S. 190, § 37.
7 Gray, 186.

SECTION 28. In every original petition brought by the owner of land alleged to be injured by a mill-dam, the respondent may bring into court and there tender any amount which he considers proper to be paid to the petitioner for the damages incurred up to the time of such tender, and may also offer to pay any certain annual compensation for the damages which may be thereafter caused by the dam. If the petitioner does not accept the amount so tendered with his costs to that time, he shall, unless he recovers greater damages or greater annual compensation than was so offered, be entitled to his costs to the time of the tender, and the respondent shall be entitled to his costs after said time.

Judgment
upon accept-
ance of tender.
R. S. 116, § 42.
G. S. 149, § 43.
P. S. 190, § 38.

SECTION 29. If the petitioner accepts the amount so offered for the past damage and for future annual compensation, he shall have judgment therefor and for costs to that time; or the petitioner may accept either the amount tendered for past damages or the offer for future annual compensation, and proceed to trial on the residue of the petition under the same liability for costs.

Who may join
in petition.
1841, 86.
G. S. 149, § 44.
P. S. 190, § 39.

SECTION 30. Two or more persons who are jointly or separately interested in the land injured may join in a petition, and the jury may assess joint or several damages as the interest and title of the petitioners may require; and judgment and execution shall conform thereto.

Pleas in abate-
ment.
R. S. 116, § 43.
1839, 151, § 5.
G. S. 149, §§ 45, 46.
P. S. 190, § 40.
9 Gray, 177.
16 Gray, 187.

SECTION 31. The provisions of chapter one hundred and seventy-three relative to pleas in abatement shall apply to petitions under the provisions of this chapter: and if new respondents are summoned in pursuance of said provisions, the petitioner may have a verdict against such of the respondents as he proves are liable, although he fails as to the rest. A petition shall not be abated by the death of any party, but it may be prosecuted or defended by the surviving petitioners or respondents or by the executor or administrator of the deceased.

New petition
after abate-
ment.
R. S. 116, § 43.
G. S. 149, § 46.
P. S. 190, § 41.

SECTION 32. If a petition is abated or otherwise defeated for any matter of form or if a judgment for the petitioner is reversed for error, the petitioner, or any person claiming under him, may file a new petition for the same cause within one year after the abatement or other determination of the original petition or after the reversal of the judgment and recover all damages sustained during the three years last preceding or at any time after the filing of the first petition.

Petition when
public way is
to be over-
flowed.
1873, 144, § 1.
P. S. 190, § 42.
119 Mass. 356.

SECTION 33. If a person who owns, erects or maintains a water mill or a dam to raise water for working such mill upon or across a stream not navigable desires to raise, erect or maintain a dam at such a height or in such a manner as to overflow or otherwise injure

5 an existing public way, he may apply by petition to the county
6 commissioners of the county in which such way is located, stating
7 the height at which it is desired to maintain such dam and the ways
8 which may be injured thereby, and asking for the alteration, change
9 of grade or specific repairs of such ways.

1 SECTION 34. Notice of the hearing upon such petition shall be
2 given to the cities and towns in which the ways are situated and to
3 the owners or occupants of the land affected thereby, in like manner
4 as notice of the laying out of highways is given.

Notice.
1873, 144, § 2.
P. S. 190, § 43.

1 SECTION 35. Said commissioners may, after a hearing, order
2 such alteration, repairs or change of grade of such ways as will in
3 their judgment enable the petitioner to raise, erect and maintain
4 such dam without overflowing or otherwise injuring such ways, and
5 they may give written direction and authority to the petitioner to
6 make at his own expense such alterations, changes of grade and
7 repairs within a reasonable time. They shall record all such orders
8 and shall cause certified copies thereof to be filed and recorded in
9 the office of the clerk of each city and town in which such altera-
10 tions, changes of grade or repairs are ordered.

Commissioners
may order
change of
grade, etc., of
ways.
1873, 144, § 1.
P. S. 190, § 44.

1 SECTION 36. The commissioners shall assess and order the peti-
2 tioner to pay all damages sustained by any person, corporation,
3 city or town by reason of the alterations, changes of grade or re-
4 pairs ordered by them, and any person, corporation, city or town
5 aggrieved by such assessment may, on application within one year
6 from the entry of such order, have the damages assessed by a jury
7 in the manner provided for the assessment of damages caused by the
8 laying out or discontinuance of highways.

— to assess
damages.
1873, 144, § 2.
1876, 117.
P. S. 190, § 45.
119 Mass. 356.

1 SECTION 37. The costs of proceedings under the provisions of
2 the four preceding sections shall be paid by the petitioners, who
3 may be required by the county commissioners to recognize with
4 sufficient sureties for the payment thereof.

Costs.
1873, 144, § 3.
P. S. 190, § 46.

1 SECTION 38. The order of the county commissioners, duly issued
2 under the provisions of section thirty-five, shall authorize the peti-
3 tioner to do all acts necessary to be done in compliance therewith;
4 and if it is shown that the petitioner has substantially complied
5 with such order, no indictment shall be maintained for the flowage
6 of, or injury to, the ways mentioned in such order, which may be
7 caused by the dam.

Order to be
protection to
petitioners.
1873, 144, § 4.
P. S. 190, § 47.

CRANBERRY LAND AND ICE PONDS.

1 SECTION 39. An owner or lessee of land appropriated or which
2 he desires to appropriate to the cultivation and growth of the cran-
3 berry may erect and maintain a dam upon and across a stream to
4 flow and irrigate said land, subject to the provisions of this chapter
5 so far as applicable; but he shall not erect and maintain a dam
6 across a navigable stream or across the outlet of a great pond,
7 without a license therefor from the board of harbor and land com-
8 missioners.

Dam to flow
cranberry
land.
1866, 206.
P. S. 190, § 48.
1892, 55.
117 Mass. 213.
126 Mass. 458.
131 Mass. 207.
154 Mass. 582.

Apportion-
ment of ex-
pense.
1871, 163.
P. S. 190, § 49.

SECTION 40. If a dam has been so erected or maintained or if a person has at his own expense made, kept open or repaired any ditches or drains for the improvement or cultivation of such tract of land, any owner or lessee of a like tract, who uses such dam, ditches or drains or who by more remote means receives benefit thereby for the flowing, irrigating or draining of such last-mentioned tract, shall pay to the person who has erected or maintained such dam or incurred such expense his proportionate part thereof, which shall be determined by the selectmen of the town as provided in sections four and thirty-seven to forty, inclusive, of chapter forty-nine. But no covenants or agreements by or between the owners or lessees of such land shall be affected by the provisions of this section.

Ice ponds.
1898, 480.

SECTION 41. An owner or lessee of land which is used for an ice pond may erect and, between the first day of November and the first day of March, maintain a dam across a stream not navigable, for the purpose of making an ice pond by flowing adjoining land, subject to the provisions of this chapter so far as applicable, if he annually pays to the owner of land which may be overflowed or injured thereby the amount of the tax which may from time to time be assessed on such land; but such dam shall not be erected without the consent of all of the owners of the land which would be flowed by it, unless the person or corporation proposing to erect it shall furnish to such owners as do not consent to the erection security, satisfactory to them or approved by a justice of a court of record or by a master in chancery, for the payment of any damages which may be caused by flowing the land of such owners.

DAMS OF RESERVOIR CORPORATIONS.

Land flowed
by reservoir
corporation.
1861, 383, § 1.
P. S. 190, § 50.

SECTION 42. A domestic reservoir corporation may flow the land of other persons by its reservoir dam, and a person whose land or property has been flowed or injured by such dam, unless compensation has been otherwise made, may obtain compensation therefor as provided in this chapter.

Security.
1869, 383, § 2.
P. S. 190, § 51.

SECTION 43. The court in which a petition for such compensation is pending, shall if requested by the petitioner, require such corporation to give satisfactory security for the payment of all damages and costs which may be awarded upon such petition; and if, upon petition and notice to the corporation, the court finds that the security has become insufficient, it shall require the corporation to give further security. If the corporation neglects for one month or for such further time as the court allows to comply with any such order, it shall lose all rights under the provisions of this chapter, and the court may restrain it from flowing or injuring such land or property until such security has been given.

SAFETY OF RESERVOIRS AND DAMS.

Reservoir, etc.,
not to be con-
structed or
altered, until.
1875, 178, § 1.
P. S. 190, § 52.

SECTION 44. A reservoir, reservoir-dam or mill-dam shall not be constructed nor materially altered until plans and specifications of the proposed work have been filed with and approved by the

4 county commissioners of the county in which it is situated. Said
 5 commissioners shall retain and record such plans and specifications
 6 and shall inspect the work during its progress; and if at any time
 7 it appears that the plans and specifications are not faithfully ad-
 8 hered to, they may appoint an inspector to be constantly engaged
 9 at the expense of the owners in the supervision of the work.
 10 Upon a refusal of the owners or of their agents to adhere to said
 11 plans and specifications, said inspector may order the discontinu-
 12 ance of the work. The provisions of this and the six following
 13 sections shall not apply to small dams, constructed for irrigation
 14 or for other purposes, the breaking of which would involve no risk
 15 to life or property.

1 SECTION 45. The county commissioners shall, as often as once in
 2 three years, if in their judgment the public good requires it, thor-
 3 oughly examine every reservoir, reservoir-dam and mill-dam, by the
 4 breaking of which loss of life or damage to a road or bridge is liable
 5 to be caused, and they shall at any time make such examination upon
 6 written application by the mayor and aldermen of the city or select-
 7 men of the town in which such damage is liable to be caused or by
 8 a person whose property is liable to be so damaged. Such exam-
 9 ination shall be made after notice to the owner of such reservoir
 10 or dam or to his agent and, if made upon such application, it shall
 11 be by the commissioners personally with the aid of a competent
 12 engineer. In other cases, the commissioners may cause it to be
 13 made by a competent engineer, who shall report to them in writing
 14 whether he considers it safe and in good condition and, if not, its
 15 condition in detail and the work or change required for safety and
 16 the public good. The engineer shall be allowed by the commis-
 17 sioners a reasonable compensation for his services, which shall be
 18 paid by the county.

Examination
of reservoir or
dam.
1854, 327, § 1.
G. S. 149, § 47.
1875, 178, § 2.
P. S. 190, § 53.
1891, 315.
1893, 99, §§ 1, 3.

1 SECTION 46. If, upon such examination, the structure is not, in
 2 the judgment of the commissioners, sufficiently strong to resist the
 3 action of the water under any circumstances which may reasonably
 4 be expected to occur, they shall, with the advice of an engineer,
 5 determine and direct what alterations or repairs are required to
 6 make the structure permanent and secure, and shall in writing
 7 order the owners thereof to make such alterations or repairs within
 8 a reasonable time, and the results of such examination and the
 9 orders thereon shall be duly recorded by said commissioners.

Alterations or
repairs.
1854, 327, § 1.
G. S. 149, § 48.
1875, 178, § 3.
P. S. 190, § 54.
1893, 99, § 2.

1 SECTION 47. If the owner of a reservoir or dam which has been
 2 so examined and adjudged to be unsafe refuses or neglects to
 3 make such alterations or repairs as the commissioners order, they
 4 shall cause such reservoir or dam, or such parts thereof as they
 5 may consider necessary for the safety of life, property, roads or
 6 bridges on the stream below, to be removed or the water to be
 7 drawn off. After such removal, no structure shall be erected except
 8 in compliance with the provisions of the three preceding sections;
 9 and after the water has been drawn off, the reservoir shall not be
 10 filled again until the orders of the commissioners have been com-
 11 plied with.

Proceedings
upon failure
to comply with
such order.
1854, 327, §§ 2, 3.
G. S. 149, §§ 49,
50.
1875, 178, § 4.
P. S. 190, § 55.

Costs.
1854, 327, § 4.
G. S. 149, § 51.
1875, 178, § 5.
P. S. 190, § 56.

SECTION 48. The commissioners shall make such orders as to the costs of all proceedings under the provisions of the three preceding sections as they may consider just; but if the reservoir or dam is adjudged unsafe, said costs shall be paid by the owner.

Acts of commissioners not to impair liability, etc.
1875, 178, § 6.
P. S. 190, § 57.

SECTION 49. No order, approval, request or advice of the county commissioners shall impair the legal duties and obligations of the owners of reservoirs, reservoir-dams or mill-dams or their liability for the consequences of their illegal acts or of the neglect or mismanagement of their agents or servants.

Jurisdiction.
1857, 163.
G. S. 149, § 52.
1875, 178, § 7.
P. S. 190, § 58.

SECTION 50. The supreme judicial court and the superior court shall have jurisdiction in equity to enforce the provisions of the six preceding sections.

REPAIRING AND REBUILDING MILLS AND MILL-DAMS.

Power of majority to repair, etc.
1709-10, 3, § 1.
1795, 74, § 6.
R. S. 116, § 44.
G. S. 149, § 53.
P. S. 190, § 59.

SECTION 51. If a mill which is owned by joint tenants or tenants in common, or the dam or appurtenances of such mill, require repairs or rebuilding in whole or in part, and all the proprietors do not agree to join therein, a majority in interest of the proprietors may cause the work to be done at the expense of the whole in proportion to their respective interests.

Meeting of proprietors.
1709-10, 3, § 1.
1795, 74, § 5.
R. S. 116, § 45.
G. S. 149, § 54.
P. S. 190, § 60.

SECTION 52. One or more of the proprietors may call a meeting by a notice signed by the person or persons who call it, addressed to each of the other proprietors, stating that the mill, dam or appurtenances require repairs or rebuilding and that their attendance is requested at a meeting of the proprietors thereof at the mill at a time named to consult and agree upon the measures to be taken for such purpose.

Notice.
1709-10, 3, § 1.
1795, 74, § 5.
R. S. 116, §§ 46, 47.
G. S. 149, § 55.
P. S. 190, § 61.

SECTION 53. The notice shall be served by an officer qualified to serve civil process by delivering an attested copy thereof to each proprietor, or by leaving such copy at his last and usual place of abode, not less than seven nor more than thirty days before the day appointed for the meeting, and such officer's return, specifying the persons on whom he has served the notice and the time and manner of the service on each, shall be sufficient evidence thereof.

Proceedings.
1709-10, 3, § 2.
1795, 74, § 6.
R. S. 116, § 48.
G. S. 149, § 56.
P. S. 190, § 62.

SECTION 54. At such meeting, or at any adjournment thereof, the majority in interest of the proprietors of the mill may take measures to cause the mill or the dam or appurtenances thereof to be repaired or rebuilt, as they shall consider most for the interest of all concerned therein.

Apportionment of expense of work.
1709-10, 3, § 2.
1795, 74, § 6.
R. S. 116, § 49.
G. S. 149, § 57.
P. S. 190, § 63.

SECTION 55. Each proprietor shall, upon demand, after the work is completed, pay to the proprietors by whom it has been advanced his just and equal part of the expense of such repair or rebuilding, in proportion to his share or interest in the mill, with interest from the time of the advance.

Lien for such payment.
1795, 74, § 6.
R. S. 116, § 50.
G. S. 149, § 58.
P. S. 190, § 64.

SECTION 56. The proprietors who advance the money so expended shall have a lien therefor on the rents and profits of the mill and may retain so much thereof as belongs to any proprietor

4 indebted to them for such advance, to be applied to the payment
5 of his debt; or they may maintain an action for the debt or for as
6 much thereof as has not been paid out of the rents and profits.

1 SECTION 57. The guardian of a proprietor may act for him in
2 calling or attending a meeting of the proprietors, and may there
3 vote and do all such other acts as the ward could do if competent
4 to act.

G. S. 149, § 59.

P. S. 190, § 65.

Proprietor
under guar-
dianship.
1795, 74, § 7.
R. S. 116, § 51.

1 SECTION 58. If part of the mill is held by a tenant for life or
2 years, the amount due for the repairs and other expenses on that
3 part of the mill shall be apportioned on the tenant for life or years
4 and on the remainderman or reversioner in proportion to the value
5 of their respective interests; and the person to whom the money
6 is due from such remainderman or reversioner shall have a lien on
7 the rents and profits belonging to him after his estate comes into
8 possession, if not sooner paid, notwithstanding any limitation by
9 lapse of time.

Apportion-
ment of
expenses
between
tenant for life
or years and
remainder-
man.
1795, 74, § 7.
R. S. 116, § 53.
G. S. 149, § 60.
P. S. 190, § 66.

1 SECTION 59. A mortgagee in possession shall be considered a
2 proprietor for the purposes of this chapter; but if the action is
3 brought against the mortgagor before his right of redemption has
4 been foreclosed, he shall also be liable for all amounts so due on
5 account of his share of the mill, so far as the same have not been
6 recovered from the mortgagee. All amounts paid on this account
7 by the mortgagee shall be allowed, between him and the mort-
8 gageor, as so much paid for repairs or improvements.

If proprietor
has mortgaged
his interest.
1795, 74, § 7.
R. S. 116, § 54.
G. S. 149, § 61.
P. S. 190, § 67.

1 SECTION 60. A tenant in tail of a part of a mill shall, for the
2 purposes of this chapter, be considered the proprietor thereof in fee
3 simple.

G. S. 149, § 62.

P. S. 190, § 68.

Tenant in tail.
1795, 74, § 7.
R. S. 116, § 55.

1 SECTION 61. All amounts due from one proprietor to another
2 for money advanced under the provisions of this chapter may be
3 recovered in an action of contract; and if two or more proprietors
4 are so indebted, by a suit in equity. The amount so recovered
5 shall be apportioned by the court among the plaintiffs, if more
6 than one, according to their respective rights.

Recovery of
amount paid
for repairs.
R. S. 116, § 56.
G. S. 149, § 63.
P. S. 190, § 69.

1 SECTION 62. The provisions of this chapter shall not affect any
2 contract or agreement by or between the proprietors of a mill as to
3 the repair or rebuilding thereof.

G. S. 149, § 64.

P. S. 190, § 70.

4 Mass. 559.

Contracts be-
tween parties.
1709-10, 3, § 4.
1795, 74, § 6.
R. S. 116, § 58.

MILLERS.

1 SECTION 63. A miller occupying and using a grist mill who
2 neglects to provide himself with scales and weights or a vibrating
3 steelyard to weigh corn, grain and meal to and from the mill, when
4 required, or who refuses so to weigh corn, grain or meal when re-
5 quired, shall for each offence forfeit to any person who sues there-
6 for not more than five dollars.

P. S. 190, § 71.

Millers to keep
scales, etc.
C. L. 106, § 2.
1709-10, 3, § 5.
1728-9, 6, §§ 1, 2.
1762-3, 19, § 5.
1795, 74, § 59.
R. S. 116, § 59.
G. S. 149, § 65.

1 SECTION 64. The toll for grinding any kind of grain shall not
2 exceed one-sixteenth part thereof.

1762-3, 19, § 6.

1795, 74, § 9.

R. S. 116, § 60.

G. S. 149, § 66.

P. S. 190, § 72.

Toll.
C. L. 106, § 2.
1709-10, 3, § 3.
1728-9, 6, § 2.

CHAPTER 197.

OF LIENS ON BUILDINGS AND LAND.

- SECTIONS 1-5. — Persons Entitled.
 SECTIONS 6-24. — Proceedings.
 SECTIONS 25-27. — Attaching Creditors.
 SECTIONS 28-31. — Dissolution.
 SECTIONS 32, 33. — General Provisions.

PERSONS ENTITLED.

Lien for labor and materials.
 1819, 156, § 1.
 R. S. 117, § 1.
 1851, 343, § 1.
 1852, 307, § 1.
 1855, 431, § 1.
 G. S. 150, § 1.
 P. S. 191, § 1.
 1900, 256.
 13 Gray, 311.
 5 Allen, 406, 540.
 101 Mass. 435.
 106 Mass. 228, 528.
 114 Mass. 476.
 116 Mass. 374.
 126 Mass. 148.
 131 Mass. 177.
 140 Mass. 256, 526.

SECTION 1. A person to whom a debt is due for labor performed or furnished or for materials furnished and actually used in the erection, alteration, repair or removal of a building or structure upon land, by virtue of an agreement with or by consent of the owner of such building or structure or of a person having authority from or rightfully acting for such owner in procuring or furnishing such labor or materials, shall, subject to the provisions of this chapter, have a lien upon such building or structure and upon the interest of the owner thereof in the lot of land upon which it is situated to secure the payment of the debt so due to him and of the costs of enforcing such lien.

144 Mass. 534.	158 Mass. 552.	165 Mass. 113.	143 Mass. 105.
148 Mass. 104.	160 Mass. 48.	168 Mass. 467.	171 Mass. 294.
155 Mass. 549.	162 Mass. 503.	169 Mass. 257, 351.	174 Mass. 494.
156 Mass. 205.	164 Mass. 146.	170 Mass. 50.	175 Mass. 432.
			176 Mass. 237.

— for labor upon entire contract.
 1872, 318, § 1.
 P. S. 191, § 2.
 7 Allen, 412.
 126 Mass. 169, 309.
 141 Mass. 280.

SECTION 2. If such agreement is for labor performed or furnished and for materials furnished under an entire contract and for an entire price, a lien for the labor alone may be enforced, if the value of such labor can be distinctly shown; but it shall not be enforced for an amount greater than the entire contract price.

147 Mass. 493.	158 Mass. 71.	159 Mass. 206.	162 Mass. 593.
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Notice of lien for materials.
 1855, 431, § 1.
 G. S. 150, § 2.
 1872, 318, § 3.
 P. S. 191, § 3.
 2 Allen, 424.
 155 Mass. 549.
 159 Mass. 124.

SECTION 3. The lien shall not attach for materials unless the person who furnishes them, before so doing, gives notice in writing to the owner of the property to be affected by the lien, if such owner is not the purchaser of such materials, that he intends to claim such lien.

168 Mass. 435.	173 Mass. 332.
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No lien if notice by owner.
 1855, 431, § 4.
 G. S. 150, § 4.
 P. S. 191, § 4.
 5 Cush. 119.
 105 Mass. 345.

SECTION 4. If the owner of a building or structure which is in process of erection, alteration, repair or removal is a person other than the party by whom or in whose behalf a contract for labor and materials has been made, he may prevent the attaching of a lien for labor not then performed, or for materials not then furnished, by giving notice in writing to the person who performs or furnishes such labor or furnishes such materials, that he will not be responsible therefor.

Lien invalid against prior mortgage.
 1852, 307, § 1.
 G. S. 150, § 3.
 P. S. 191, § 5.

SECTION 5. The lien shall not avail against a mortgage actually existing and duly recorded prior to the date of the contract under which the lien is claimed.

117 Mass. 167, 176.	144 Mass. 534.	168 Mass. 538.	172 Mass. 553.
120 Mass. 408.	161 Mass. 462.	170 Mass. 311.	177 Mass. 506.

PROCEEDINGS.

1 SECTION 6. The lien shall be dissolved unless the person claim-
 2 ing it, within thirty days after he ceased to labor on or to furnish
 3 labor or materials for the building or structure, files in the registry
 4 of deeds for the county or district in which it is situated a state-
 5 ment, signed and sworn to by him or a person in his behalf, giving
 6 a just and true account of the amount due him, with all just
 7 credits, a description of the property intended to be covered by
 8 the lien sufficiently accurate for identification and the name of
 9 the owner or owners of such property, if known. If a lien is
 10 claimed for labor only performed or furnished under an entire
 11 contract which includes both labor and materials at an entire price,
 12 the contract price, the number of days of labor performed or fur-
 13 nished and the value of the same shall also be stated. The state-
 14 ment shall not be invalid or insufficient solely by reason of an
 15 inaccuracy in stating or failing to state the contract price, the
 16 number of days of labor performed or furnished, and the value of
 17 the same, if it is shown that there was no intention to mislead and
 18 that the parties entitled to notice of the statement were not in fact
 19 misled thereby.

Lien dissolved unless statement is filed.
 1851, 343, § 2.
 1855, 431, § 2.
 G. S. 150, § 5.
 1872, 318, § 2.
 1874, 321, § 4.
 1877, 93, § 1.
 P. S. 191, § 6.
 1892, 191.
 7 Gray, 429.
 8 Allen, 590.
 110 Mass. 116.
 116 Mass. 375.
 117 Mass. 179.
 119 Mass. 459.
 120 Mass. 58,
 510.
 124 Mass. 404,
 516, 548.
 128 Mass. 534.
 142 Mass. 80.
 143 Mass. 380.
 154 Mass. 590.
 161 Mass. 463.
 162 Mass. 432.
 163 Mass. 7.
 164 Mass. 410.
 167 Mass. 136.
 168 Mass. 435.
 171 Mass. 231.
 175 Mass. 175,
 193.

176 Mass. 164, 233.

1 SECTION 7. The validity of the lien shall not be affected by
 2 an inaccuracy in the statement relative to the property to which
 3 it attaches, if such property can be reasonably recognized from the
 4 description, nor by an inaccuracy in stating the amount due for
 5 labor or materials, unless it is shown that the person filing the
 6 statement has wilfully and knowingly claimed more than is due to
 7 him.

Inaccuracy in statement, etc.
 1855, 431, § 3.
 G. S. 150, § 6.
 P. S. 191, § 8.
 6 Gray, 531.
 13 Gray, 100.
 2 Allen, 424.
 3 Allen, 464.
 8 Allen, 590.
 108 Mass. 103.
 141 Mass. 273.

162 Mass. 432. 163 Mass. 7. 164 Mass. 410. 168 Mass. 435. 176 Mass. 83.

1 SECTION 8. The statement shall remain in the custody of the
 2 register and be open to public inspection. He shall record it in a
 3 book to be kept for the purpose, but the items of the account, ex-
 4 cept the total amount claimed to be due, may be omitted from the
 5 record.

Duties of register.
 1855, 431, § 2.
 G. S. 150, § 5.
 1875, 20.
 1877, 93, § 2.
 P. S. 191, § 7.

1 SECTION 9. The lien shall be dissolved unless a petition to en-
 2 force it is filed within ninety days after the person claiming it has
 3 ceased to perform labor on or to furnish labor or materials for the
 4 building or structure. The petition shall contain a brief statement
 5 of the contract on which it is founded and of the amount due
 6 thereon, a description of the premises subject to the lien and all
 7 other material facts and circumstances, and shall pray that the
 8 premises may be sold and the proceeds of the sale applied to the
 9 discharge of the debt. The date of the filing of the petition shall
 10 be the commencement of the proceeding to enforce the lien.

Petition to enforce lien.
 1819, 156, § 1.
 R. S. 117, §§ 3, 5.
 1871, 343, § 3.
 1888, 55.
 G. S. 150, §§ 7,
 8, 11.
 P. S. 191, §§ 9,
 10, 13.
 1888, 344, § 1.
 4 Cush. 532.
 170 Mass. 449.
 176 Mass. 83.

1 SECTION 10. The superior court for the county in which the
 2 building or structure is situated shall have jurisdiction to enforce
 3 liens under the provisions of this chapter; but if the building or
 4 structure affected by the lien is situated within their respective
 5 jurisdictions, a trial justice shall have original and concurrent
 6 jurisdiction with the superior court if the amount claimed does not
 7 exceed three hundred dollars, a police, district or municipal court,

Jurisdiction.
 1819, 156, § 2.
 R. S. 117, § 4.
 1851, 343, § 4.
 1855, 431, § 5.
 G. S. 150, §§ 8, 9.
 1879, 113.
 P. S. 191, §§ 10,
 11.
 1883, 396, § 12.
 1894, 431.
 164 Mass. 144.

except the municipal court of the city of Boston, shall have like jurisdiction if the amount claimed does not exceed one thousand dollars, and the municipal court of the city of Boston shall have like jurisdiction if the amount claimed does not exceed two thousand dollars. The parties shall have like rights of appeal as in other civil cases.

Who may join.
1862, 307, § 2.
G. S. 150, § 13.
P. S. 191, § 15.

SECTION 11. If two or more persons have actually performed labor on or furnished labor or materials for one or more buildings or structures upon different lots of land for the same owner, contractor or other person, they may join in one petition to enforce their respective liens; and the proceedings shall be the same, and the respondent may defend as to each petitioner, as if each petitioner had filed a separate petition.

Summons.
1819, 156, § 3.
R. S. 117, § 7.
G. S. 150, § 14.
1871, 78.
P. S. 191, § 16.
1888, 344, § 2.
5 Cush. 119.
118 Mass. 595.

SECTION 12. The court or justice shall issue a precept to an officer qualified to serve civil process, commanding him to summon the owner of the building or structure to appear and answer said petition and to give notice of the filing of said petition to the debtor, if he is not the owner of the building or structure, and to all creditors who have a lien of the same kind upon the same estate. Such precept shall be in substance as follows:—

COMMONWEALTH OF MASSACHUSETTS.

[L. S.] ss. To the sheriffs of our several counties or their deputies, [or to any constable of the city or town of in said county] greeting.

We command you to summon the alleged owner of a certain building or structure on real estate [description] to appear before court at within [and for] our said county of on then and there in our said court to answer unto a petition for lien which petitioner hath filed in said court to enforce a lien upon said building or structure and the interest of said alleged owner in the lot of land upon which the same is situated to secure payment of a debt amounting to dollars and cents alleged to be due said petitioner [for labor performed on said building or structure, or for labor furnished, or for materials furnished and actually used on said building or structure, *as the case may be*] and the costs which may accrue in enforcing such lien.

And we further command you to notify the debtor in said petition mentioned and all creditors other than the petitioner having liens of the same kind upon the same estate that said petition has been filed in our said court. And have you there this precept with your doings therein.

Witness Esquire, at this day of in the year of our Lord one thousand nine hundred and

[Clerk or Justice.]

An attested copy of such precept shall be served upon said owner, debtor and each of said creditors and shall be posted upon said building or structure fourteen days at least before the return day thereof. The fees of the officer shall be fifty cents for each person upon whom service is made and thirty cents for each copy, with fees for travel as in the service of other civil process. If the petition is filed in a police, district or municipal court or before a trial justice, the day for the appearance and answer shall be fixed at not more than sixty days from the day of entry.

Further notice.
1819, 156, § 3.
R. S. 117, §§ 8, 9.

SECTION 13. If the court or justice finds that a person who is entitled to notice is absent from the commonwealth or that it is

3 probable that he cannot be found to be served with the precept or
4 notice, the petition shall be continued until such notice as the court
5 or justice orders has been given. If, at the time assigned for the
6 hearing, it appears that a person interested has not had sufficient
7 notice of the petition, the court may order further notice.

G. S. 150, §§ 15,
16.
1880, 216.
P. S. 191, §§ 17,
18.
1888, 344, § 3.
5 Cush. 119.
103 Mass. 227.

1 SECTION 14. A creditor who has a lien under the provisions of
2 this chapter upon the same property may appear and prove his
3 claim, and the owner and each creditor may contest the claim of
4 any other creditor. The court may allow amendments to the
5 pleadings as in actions at law.

Other creditors
may intervene;
amendments.
1819, 156, § 3.
R. S. 117, § 10.
1855, 431, § 6.
G. S. 150, §§ 12,
17.

P. S. 191, §§ 19, 20.

141 Mass. 273.

168 Mass. 436.

1 SECTION 15. The court shall determine all claims in a summary
2 manner, but every material question of fact arising in the case in
3 the superior court shall be tried by a jury, if such trial is required
4 by a party or is ordered by the court upon a question stated, upon
5 an issue framed or otherwise, as the court may order.

Trial.
1819, 156, §§ 3, 7.
R. S. 117, §§ 10,
11.
G. S. 150, §§ 17,
18.
P. S. 191, §§ 19,
21.

170 Mass. 1.

1 SECTION 16. A claim due absolutely and without condition,
2 although not payable at the time of determination, shall be allowed
3 with a rebate of interest to the time when it would become payable.
4 If the owner has failed to perform his part of the contract and by
5 reason of such failure the other party is without his own default
6 prevented from completely performing his part thereof, he shall be
7 entitled to a reasonable compensation for as much as he has per-
8 formed, in proportion to the price stipulated for the whole.

Claims
allowed.
1819, 156, § 4.
R. S. 117, §§ 12,
13.
G. S. 150, §§ 19,
20.
P. S. 191, §§ 22,
23.
156 Mass. 205.
172 Mass. 597.

1 SECTION 17. If a lien is established the court shall order a sale
2 of the property to be made by an officer qualified to serve civil
3 process. The court may order a sale of a part of the property
4 sufficient to satisfy the claims allowed, if such part can be set off
5 from the residue and sold without damage to the whole.

Sale.
1819, 156, § 3.
R. S. 117, §§ 14,
15.
G. S. 150, §§ 21,
22.
P. S. 191, §§ 24,
25.

1 SECTION 18. The officer shall give notice of the time and place
2 of sale as provided for sales of land on execution or as ordered by
3 the court.

—notice of.
1819, 156, § 5.
R. S. 117, § 16.
G. S. 150, § 23.
P. S. 191, § 26.

1 SECTION 19. An interest in land which is sold under the pro-
2 visions of this chapter may be redeemed, as provided for sales of
3 land on execution.

Redemption.
1819, 156, § 3.
R. S. 117, § 17.
G. S. 150, § 24.
P. S. 191, § 27.

1 SECTION 20. If all the claims against the property covered by
2 the lien were ascertained at the time of ordering the sale and if the
3 proceeds of the sale are sufficient therefor, the court may order
4 the officer to distribute them, after deducting all lawful charges and
5 expenses, to and among the several creditors to the amount of their
6 respective debts, with interest, or, if insufficient, to distribute the
7 same among the creditors in proportion to the amount due to each.
8 If all the claims were not ascertained at the time of ordering the
9 sale or other sufficient cause is shown, the court may order the offi-
10 cer to bring the proceeds of the sale into court to be disposed of
11 according to its decree. If the whole cannot be conveniently dis-
12 tributed at one time, the court may make successive orders of dis-

Distribution.
1819, 156, § 5.
R. S. 117, § 18-
20.
G. S. 150, §§ 25-
27.
P. S. 191, §§ 28-
30.
116 Mass. 196.
141 Mass. 280.
175 Mass. 34.

tribution. If there is a surplus of the proceeds of the sale after 13
making all the payments before mentioned, it shall be paid over to 14
the owner of the property ; but, before it is so paid over, it may 15
be attached or taken on execution in like manner as proceeds from 16
a sale on execution. 17

Costs.
R. S. 117, § 32.
G. S. 150, § 39.
P. S. 191, § 41.

SECTION 21. The costs shall, except as herein otherwise pro- 1
vided, be in the discretion of the court, and shall be paid from the 2
proceeds of the sale or by any of the parties, as it may order. 3

Petition
against heirs
or assigns of
original owner.
R. S. 117, § 27.
G. S. 150, § 34.
P. S. 191, § 37.
5 Cush. 119.

SECTION 22. If the person for whom the labor has been per- 1
formed or furnished or the materials have been furnished dies or 2
conveys away his estate or interest before the filing of the petition, 3
it may be filed and prosecuted against his heirs or against the per- 4
sons holding the estate or interest which he had in the land at the 5
time when the labor or materials were performed or furnished. If 6
the petition was filed in the lifetime of such person, it may be pros- 7
ecuted against his executor, administrator, heirs or assigns as if the 8
estate or interest had been mortgaged to secure the debt. 9

— or by ex-
ecutor or ad-
ministrator
of petitioner.
R. S. 117, § 28.

SECTION 23. If the creditor dies without having filed such peti- 1
tion, it may be filed and prosecuted by his executor or administra- 2
tor ; or if he dies after having filed it, it may be so prosecuted. 3

G. S. 150, § 35.

P. S. 191, § 38.

Prosecution by
one creditor of
petition filed
by another.
R. S. 117, §§ 30,
31.
G. S. 150, §§ 37,
38.
P. S. 191, §§ 39,
40.

SECTION 24. If the petition was filed by the creditor before his 1
right of action accrued or after it was barred, or if he becomes 2
nonsuit or fails to establish his claim, it may be prosecuted by any 3
other creditor having such lien, who, at or after the time of filing 4
the original petition, might have filed a like petition on his own 5
claim. If the petition was filed by the creditor before his right of 6
action accrued and it is so prosecuted by such other creditor, the 7
claim of the petitioning creditor may be allowed, but he shall not 8
recover costs, and the court may order him to pay a part or the 9
whole of the costs of the debtor. 10

ATTACHING CREDITORS.

Attachment
prior to filing
of statement.
1819, 156, § 4.
R. S. 117, §§ 21,
22.
G. S. 150, §§ 28,
29.
1861, 131.
P. S. 191, §§ 31,
32.

SECTION 25. If the interest of the owner in the building, 1
structure or land is under attachment when the statement of the 2
account is filed, the attaching creditor shall be preferred to the 3
extent of the value of the buildings and land as they were at 4
the time when the labor was commenced or the materials furnished 5
for which the lien is claimed ; and the court shall determine, as 6
provided in section fifteen, what proportion of the proceeds of the 7
sale shall be held subject to the attachment, as derived from the 8
value of property at such time. If the attaching creditor recovers 9
judgment, the proceeds so held subject to his attachment, or as 10
much thereof as may be necessary, shall be applied upon his exe- 11
cution and the residue, if any, in the same manner as if there had 12
been no such attachment. 13

— after filing
of statement.
R. S. 117, § 23.

SECTION 26. If the interest of the owner of the property is at- 1
tached after the filing of the statement, the proceeds of the sale, 2

3 after discharging all prior liens and claims, shall be applied to sat-
 4 isfy the execution of the attaching creditor, in the manner provided
 5 in chapter one hundred and seventy-seven for two or more suc-
 6 cessive attachments or seizures on execution of a right of redemp-
 7 tion.

G. S. 150, § 30.
 P. S. 191, § 33.

1 SECTION 27. Attaching creditors, as between themselves, shall
 2 be paid according to the order of their attachments. If several
 3 creditors who are entitled to the lien have equal rights as between
 4 themselves and the fund is insufficient to pay them in full, they
 5 shall share the fund in proportion to their respective debts.

Attaching
 creditors and
 claimants of
 liens, how
 paid, as be-
 tween them-
 selves.
 R. S. 117, § 25.
 G. S. 150, § 32.
 P. S. 191, § 35.

DISSOLUTION.

1 SECTION 28. A person who has an interest in property upon
 2 which the lien has been claimed may at any time before final judg-
 3 ment dissolve the lien upon his interest in the whole or any part
 4 of the property by giving bond to the party claiming the lien, with
 5 sureties who shall be approved in writing by him or his attorney,
 6 by a justice of a police, district or municipal court or by a master
 7 in chancery, conditioned to pay to such person within thirty days
 8 after final judgment an amount fixed as the value of said interest
 9 or so much thereof as may be necessary to satisfy the amount for
 10 which said interest may be found to be subject to such lien. If the
 11 parties do not agree as to the value of said interest, it may be fixed
 12 in accordance with the provisions of sections one hundred and
 13 twenty-one and one hundred and twenty-two of chapter one hundred
 14 and sixty-seven. The bond shall contain a description of the prop-
 15 erty or interest to be released and the obligor shall, within ten days
 16 after its approval, cause it to be recorded in the registry of deeds
 17 for the county or district in which the property lies. The lien shall
 18 not be dissolved until the bond has been so recorded, after which
 19 the bond may be taken by the obligee from the registry.

Dissolution by
 owner.
 1874, 321, §§ 1-3.
 1877, 43, §§ 1, 3.
 P. S. 191, §§ 42,
 43.
 1895, 404.
 120 Mass. 346.
 165 Mass. 415.

1 SECTION 29. The clerk of the court in which the petition is
 2 pending shall forward to the register of deeds for the county or
 3 district in which the property lies a certificate of the fact and man-
 4 ner of a dissolution of the lien, whenever such dissolution appears
 5 of record therein. The register shall file such certificate with the
 6 statement mentioned in section six, and shall make a record thereof
 7 with the record of said statement.

Certificate.
 1877, 43, § 4.
 P. S. 191, § 44.

1 SECTION 30. A person to whom a debt for performing or fur-
 2 nishing labor or furnishing material on property would be payable
 3 if no lien existed thereon in behalf of another person under the pro-
 4 visions of this chapter may dissolve any such existing lien, except
 5 one solely for the personal labor of the petitioner, by giving
 6 bond as provided in the two preceding sections, conditioned to
 7 pay to the person claiming the lien within thirty days after final
 8 judgment the amount, if any, for which such lien shall be estab-
 9 lished, with costs upon the petition. Unless the bond is approved
 10 by the party claiming the lien or his attorney, the sureties thereon
 11 shall not be approved unless the magistrate finds that each surety,
 12 if there are two only, is worth in excess of his debts an amount

Dissolution by
 creditor.
 1890, 383.

equal to twice that for which the lien is claimed or that the sureties, if there are more than two, are together so worth four times that amount.

Dissolution by payment.
R. S. 150, § 6.
R. S. 117, § 35.
R. S. 343, § 5.
G. S. 150, § 41.
P. S. 191, § 45.
1891, 244.

SECTION 31. If a debt secured by the lien has been paid, the creditor or his attorney shall, at the expense of the debtor, enter a discharge of his lien on the margin of the record of the statement or shall execute a release which may be recorded in the registry in which the statement is recorded.

GENERAL PROVISIONS.

Sale of estate less than a fee simple.
R. S. 117, § 26.
G. S. 150, § 33.
P. S. 191, § 36.
101 Mass. 435.
103 Mass. 470.
177 Mass. 506.

SECTION 32. If the person for whom the labor has been performed or furnished or the materials have been furnished has an estate less than a fee simple in the land or if the property is subject to a mortgage or other encumbrance, the lien shall bind such person's whole estate and interest in the property, and such estate or interest may be sold and the proceeds applied according to the provisions of this chapter.

Action at law not barred.
R. S. 117, § 33.
G. S. 150, § 40.
P. S. 191, § 46.

SECTION 33. The provisions of this chapter shall not prevent a person entitled to a lien under it from maintaining an action at law as if he had no lien.

CHAPTER 198.

OF MORTGAGES, CONDITIONAL SALES AND PLEDGES OF, AND LIENS UPON, PERSONAL PROPERTY.

SECTIONS 1-7. — Mortgages.

SECTIONS 8-10. — Pledges.

SECTIONS 11-13. — Conditional Sales.

SECTIONS 14-22. — Liens on Vessels.

SECTIONS 23-30. — Other Liens.

MORTGAGES.

Mortgages of personal property to be recorded.
R. S. 157, § 1.
R. S. 74, § 5.
R. S. 72, § 2.
G. S. 151, § 1.
R. S. 111, § 1.
R. S. 14.
P. S. 192, §§ 1, 2.
1883, 73.
2 Pick. 607.
1 Met. 436.
10 Met. 481.
13 Met. 200, 304, 358.
6 Cush. 298.
12 Cush. 109.
16 Gray, 379.
1 Allen, 373.
97 Mass. 452.
99 Mass. 397.
103 Mass. 482.
104 Mass. 249.
121 Mass. 435.
137 Mass. 460.
146 Mass. 226.
151 Mass. 300.
173 Mass. 88.

SECTION 1. Mortgages of personal property shall, within fifteen days from the date written in the mortgage, be recorded on the records of the city or town in which the mortgagor resides when the mortgage is made, and on the records of the city or town in which he then principally transacts his business or follows his trade or calling. If the mortgagor resides out of the commonwealth, and the property mortgaged is within the commonwealth when the mortgage is made, the mortgage shall be recorded on the records of the city or town in which the property then is. If a record in two different places is required and the mortgage is recorded in one within said fifteen days, it may be recorded in the other within ten days after the date of the first record. Unless the property mortgaged has been delivered to and retained by the mortgagee, the mortgage shall not be valid against a person other than the parties thereto until it has been so recorded; and a record made subsequently to the time limited shall be void.

1 SECTION 2. The provisions of the preceding section shall not
 2 apply to a mortgage of, or other instrument relative to, a ship or
 3 vessel of the United States, or to goods at sea or abroad if the
 4 mortgagee takes possession of such goods as soon as may be after
 5 their arrival in this commonwealth.

Mortgages
 exempt.
 1832, 157, § 1.
 R. S. 74, § 6.
 1851, 57.
 G. S. 151, § 2.
 P. S. 192, § 3.
 5 Allen, 280.

1 SECTION 3. City and town clerks shall, upon payment of their
 2 fees, record in books kept for the purpose mortgages of personal
 3 property or assignments of future earnings delivered to them,
 4 noting in such books and on each mortgage or assignment the time
 5 when such mortgage or assignment is received; and such mortgage
 6 or assignment shall be held to be recorded at the time when it is
 7 left for that purpose in the clerk's office. The fees for recording
 8 and for all other services relative thereto shall be the same as are
 9 allowed to registers of deeds for like services.

Duties of city
 and town
 clerks.
 1832, 157, § 2.
 R. S. 74, § 7.
 G. S. 151, § 3.
 1865, 43, §§ 2, 3.
 P. S. 183, § 39;
 192, § 4.
 105 Mass. 442.
 141 Mass. 117.

1 SECTION 4. The mortgagor or a person lawfully claiming under
 2 him may, after breach of condition, redeem the mortgaged property
 3 at any time before it is sold in pursuance of the contract between
 4 the parties, or before the right of redemption is foreclosed. The
 5 person entitled to redeem shall pay or tender to the mortgagee
 6 or to the person claiming under him the amount due on the mort-
 7 gage, or shall perform or offer performance of the condition, and
 8 shall pay all reasonable and lawful charges and expenses incurred
 9 in the care and custody of the property or otherwise arising from
 10 the mortgage; and if upon such payment or performance, or upon
 11 tender thereof, the property is not forthwith restored, the person
 12 entitled to redeem may recover it in an action of replevin, or
 13 damages for its conversion in any appropriate action.

Redemption.
 R. S. 107, §§ 40,
 41.
 G. S. 151, §§ 4, 5.
 P. S. 192, §§ 5, 6.
 142 Mass. 519.
 152 Mass. 20.

1 SECTION 5. The mortgagee or his assigns may, after breach of
 2 condition and subject to the provisions of section fifty-four of chap-
 3 ter one hundred and two, give to the mortgagor, or to the person
 4 in possession of the property claiming the same, written notice of
 5 his intention to foreclose the mortgage for breach of the condition
 6 thereof, which shall be served by leaving a copy with the mort-
 7 gator or person in possession of the property claiming the same,
 8 or by publishing it at least once in each of three successive weeks
 9 in one of the principal newspapers, if any, published in the city
 10 or town in which the mortgage is properly recorded or in which
 11 the property is situated; otherwise, in one of the principal news-
 12 papers published in such county.

Notice of in-
 tention to
 foreclose.
 1843, 72, § 1.
 1856, 174.
 G. S. 151, § 6.
 P. S. 192, § 7.
 10 Cush. 119.
 2 Gray, 203.

1 SECTION 6. The notice, with an affidavit of the service thereof,
 2 shall be recorded wherever the mortgage is recorded, and such
 3 notice and affidavit, if so recorded, or a copy of the record thereof,
 4 shall be evidence of the giving of the notice.

Record.
 1858, 3.
 G. S. 151, § 7.
 P. S. 192, § 8.
 97 Mass. 489.
 122 Mass. 129.

1 SECTION 7. If the condition is not performed or tender of per-
 2 formance made within sixty days after such notice is so recorded,
 3 the right to redeem shall be foreclosed.

Foreclosure.
 1843, 72, § 1.
 G. S. 151, § 8.
 P. S. 192, § 9.

PLEDGES.

Notice of in-
tention to sell.
G. S. 151, § 9.
P. S. 192, § 10.

SECTION 8. The holder of personal property in pledge for the payment of money or for the performance of any other thing may, after failure to pay or perform, give written notice to the pledgor that he intends to enforce payment or performance by a sale of the pledge, and such notice shall be served and, with an affidavit of the service, be recorded in the office of the clerk of the city or town in which the pledgee resides, in the manner and with the effect provided in sections five and six for notices of foreclosure.

Sale.
G. S. 151, § 10.
P. S. 192, § 11.
175 Mass. 320.

SECTION 9. If the money to be paid or thing to be done is not paid or performed, or tender thereof made, within sixty days after such notice has been so recorded, the pledgee may sell the pledge by public auction and apply the proceeds to the satisfaction of the debt or demand and of the expenses of the notice and sale. Any surplus shall be paid on demand to the party who is entitled thereto.

Contract rights
not affected.
G. S. 151, § 11.
P. S. 192, § 12.

SECTION 10. The provisions of the two preceding sections shall not authorize the pledgee to dispose of the pledge contrary to the terms of the contract under which it is held, nor shall they limit his right to dispose of it in any other manner allowed by the contract or by law.

CONDITIONAL SALES.

Redemption in
case of default.
1881, 222.
P. S. 192, § 13.

SECTION 11. If a contract for the sale of personal property is made on condition that the title thereto shall not pass until the purchase money has been fully paid and the vendor upon default takes from the vendee possession of the property, the vendee may, within fifteen days after such taking, redeem the property so taken by paying to the vendor the full amount then unpaid, with interest and all lawful charges and expenses due to the vendor.

Conditional
sales of furni-
ture, etc.
1884, 313, § 1.
165 Mass. 130.

SECTION 12. Such contracts for the sale of furniture or other household effects in the form of a lease or otherwise shall be in writing and a copy thereof shall be furnished to the vendee by the vendor at the time of such sale; and all payments made by or in behalf of the vendee and all charges in the nature of interest or otherwise, as they accrue, shall, if the vendee so requests, be indorsed by the vendor or his agent upon such copy. A failure of the vendor through negligence to comply with any of the provisions of this section shall suspend his rights under the contract while the failure continues. His refusal or wilful or fraudulent failure so to comply shall be a waiver by him of the condition of the sale.

— foreclosure
of.
1884, 313, § 2.
1892, 411.
1898, 545.

SECTION 13. Thirty days at least before taking possession of said furniture or effects for default of the vendee, the vendor shall demand in writing of the vendee or other person in charge of said furniture or effects the balance then due, and shall furnish to said vendee or other person an itemized statement of the account showing the amount due thereon. If said vendee or other person can by the exercise of reasonable care and diligence be found by the

8 vendor, the fifteen days during which his right of redemption exists
 9 under the provisions of section eleven shall not begin to run until
 10 said demand has been made, said statement furnished and said thirty
 11 days have expired. If seventy-five per cent or more of the con-
 12 tract price has been paid by a vendee whose right of redemption
 13 has expired, the furniture or effects shall, if the vendee or his
 14 legal representative in writing so requests the vendor, be sold by
 15 public auction after due advertisement, which shall be published at
 16 least three days prior to the sale in one of the principal newspa-
 17 pers, if any, published in the city or town, otherwise in one of the
 18 principal newspapers published in the county, in which the furni-
 19 ture or effects are situated. If the vendor refuses or neglects to
 20 make the sale as provided herein, the right of redemption shall not
 21 be foreclosed. If a balance of the proceeds of the sale remains
 22 after deducting the actual expenses of the sale by auction and paying
 23 from said proceeds to the vendor the balance of the contract price
 24 due him, it shall be paid to the vendee or his legal representative.

LIENS ON VESSELS.

1 SECTION 14. If by virtue of a contract, express or implied,
 2 with the owners of a vessel or with the agents, contractors or sub-
 3 contractors of such owners, or with any of them, or with a person
 4 who has been employed to construct, repair or launch a vessel or
 5 to assist therein, money is due for labor performed, materials used
 6 or labor and materials furnished in the construction, launching or
 7 repairs of, or in the construction of the launching ways for, or for
 8 provisions, stores or other articles furnished for or on account of
 9 such vessel in this commonwealth, the person to whom such money
 10 is due shall have a lien upon the vessel, her tackle, apparel and fur-
 11 niture to secure the payment of such debt, and such lien shall be
 12 preferred to all others on such vessel, except that for mariners'
 13 wages, and shall continue until the debt is satisfied.

Liens on
vessels.
1848, 290, § 1.
1855, 231, § 1.
G. S. 151, § 12.
P. S. 192, § 14.
13 Gray, 129,
134.
15 Gray, 234.
2 Allen, 605.
7 Allen, 287.
11 Allen, 157.
98 Mass. 320.
100 Mass. 409.
103 Mass. 227.
115 Mass. 179.
119 Mass. 179.
134 Mass. 186.
137 Mass. 360.

1 SECTION 15. Such lien shall be dissolved unless the person
 2 claiming it within thirty days after the vessel departs from the port
 3 at which she was when the debt was contracted, files in the office of
 4 the clerk of the city or town in which the vessel was at such time,
 5 a statement, subscribed and sworn to by him or by a person in his
 6 behalf, giving a true account of the demand claimed to be due to
 7 him, with all just credits, the name of the person with whom the
 8 contract was made, the name of the owner of the vessel, if known,
 9 and the name of the vessel or a description thereof sufficient for
 10 identification. The statement shall be recorded by such clerk in a
 11 book kept by him for that purpose, and the fees therefor shall be
 12 the same as for recording mortgages.

— dissolved,
unless.
1848, 290, § 2.
1855, 231, § 2.
G. S. 151, § 13.
P. S. 192, § 15.
1896, 404.
15 Gray, 234.
8 Allen, 35.
98 Mass. 320.
119 Mass. 179.

1 SECTION 16. A place in which the vessel is wholly or partly
 2 constructed shall be held to be the port at which she was when the
 3 debt was contracted. The lien shall not be affected by any inac-
 4 curacy in the description of the vessel, if she can be recognized
 5 thereby, nor in stating the amount due for labor or materials, un-
 6 less it is found that the person filing the statement has knowingly
 7 claimed more than is due.

— inaccuracies
not to affect.
G. S. 151, § 14.
P. S. 192, § 16.
8 Allen, 35.
119 Mass. 179.

Liens on ves-
sels may be
enforced by
petition, etc.
1855, 231, § 3.
G. S. 151, §§ 15,
17.
P. S. 192, §§ 17,
20.
3 Allen, 207.
103 Mass. 227.
109 Mass. 576.
157 Mass. 525.
159 Mass. 60.
167 U. S. 606.

SECTION 17. A person having such lien, unless the contract described in section fourteen is a maritime contract and the enforcement of the lien is within the exclusive jurisdiction of the courts of the United States, may file a petition to enforce the lien in the superior court for the county in which the vessel was at the time when the debt was contracted or in which she is at the time of filing the petition, or such petition may be inserted in a writ of original summons with an order of attachment, and served, returned and entered like other civil actions. The subsequent proceedings shall, except as hereinafter provided, be as prescribed in chapter one hundred and ninety-seven so far as applicable. Upon the filing of the petition, a process of attachment against such vessel, her tackle, apparel and furniture shall issue, and the attachment may be dissolved as in a civil action, but such dissolution shall not dissolve the lien. The pleadings may be amended as in actions at law.

Form of
petition.
G. S. 151, § 16.
P. S. 192, § 18.

SECTION 18. The petition shall contain a brief statement of the labor, materials or work done or furnished, or of the stores, provisions or other articles furnished, and of the amount due therefor, with a description of the vessel which is subject to the lien, and all other material facts and circumstances, and shall pray that the vessel may be sold and the proceeds of the sale applied to the discharge of the debt.

Who may join
in petition.
1855, 231, § 4.
G. S. 151, § 18.
P. S. 192, § 19.

SECTION 19. Two or more persons who have such liens upon the same vessel may join in a petition to enforce them, and the proceedings shall be the same and the respondent may defend as to each petitioner as if each had filed a separate petition.

Distribution of
proceeds of
sale.
1855, 231, § 5.
G. S. 151, § 19.
P. S. 192, § 21.

SECTION 20. If money is due to more than one person holding such lien and all parties interested have been cited to appear and answer, the claims of all shall be marshalled, and the court shall make such order or decree as may be necessary to prevent the enforcement of a double lien for the same labor, materials, stores, provisions or other articles, and to secure the rights of each. The proceeds from the sale of the vessel, after deducting all costs and expenses, shall be distributed among the several claimants according to the amount of their respective debts, except that, if such proceeds are insufficient to satisfy the liens of all, those who have liens for labor shall receive a percentage on their respective claims one-third greater, as near as may be, than those who have liens for materials, stores or other articles.

Payment by
owner of
vessel.
1862, 185.
P. S. 192, § 22.

SECTION 21. If a contractor or sub-contractor unreasonably neglects or refuses to pay for labor procured by him to be performed in constructing, repairing or launching a vessel upon which a lien exists therefor and the owner or other person who made the agreement with such contractor or sub-contractor pays the debt secured by the lien, he shall have the same claim against such contractor or sub-contractor as if the lien had been enforced by judgment.

1 SECTION 22. The provisions of the eight preceding sections
 2 shall not affect any lien on foreign vessels which exist independent
 3 of statute.

Other liens not
 affected.
 1855, 231, § 6.
 G. S. 151, § 20.
 P. S. 192, § 23.

OTHER LIENS.

1 SECTION 23. A person who has a lien, which is not described in
 2 chapter one hundred and ninety-seven or in the nine preceding sec-
 3 tions, for money due to him on account of work and labor, care and
 4 diligence, or money expended on or about personal property under
 5 a contract express or implied, if such money is not paid within sixty
 6 days after a demand in writing delivered to the debtor or left at his
 7 usual place of abode, if within this commonwealth, or made by let-
 8 ter addressed to him at his usual place of abode without the com-
 9 monwealth and deposited, postpaid, in the post office, may file a
 10 petition in the superior court, a police, district or municipal court
 11 or with a trial justice in the county in which the petitioner resides
 12 or has his usual place of business for an order for the sale of the
 13 property in satisfaction of the debt.

Other liens,
 how enforced.
 G. S. 151, § 21.
 P. S. 192, § 24.
 1888, 46.
 14 Allen, 139.

1 SECTION 24. The court or justice shall thereupon issue a notice
 2 to the owner of the property to appear at a time and place desig-
 3 nated, which shall be served by an officer qualified to serve civil
 4 process or by a disinterested person by delivering to the owner or
 5 by leaving at his usual place of abode, if within the commonwealth,
 6 a copy thereof fourteen days before the hearing. The return, if
 7 not made by an officer, shall be under oath.

Notice.
 G. S. 151, § 22.
 P. S. 192, § 25.
 170 Mass. 210.

1 SECTION 25. If the owner or his usual place of abode is un-
 2 known, the petition may be filed sixty days after the money be-
 3 comes due, and the notice describing the property may be issued
 4 "to the unknown owner", or to the owner, naming him, "whose
 5 usual place of abode is unknown". If the owner resides out of the
 6 commonwealth or he or his usual place of abode is unknown, the
 7 notice may be given by publication, as provided in section five.

—if owner or
 his abode is un-
 known or out
 of common-
 wealth.
 G. S. 151, §§ 23,
 24.
 P. S. 192, § 26.
 1813, 173.

1 SECTION 26. If, upon default or a hearing, it is found that a
 2 lien exists upon the property and that the property ought to be
 3 sold for the satisfaction of the debt, the court or justice may make
 4 an order for such sale, determine and record the amount then due
 5 and award costs to the prevailing party. Any surplus of the pro-
 6 ceeds of the sale, after satisfying the debt and costs and charges,
 7 shall be paid to the owner upon demand.

Order for sale,
 and distribu-
 tion of pro-
 ceeds.
 G. S. 151, §§ 25,
 26, 28.
 P. S. 192, §§ 27,
 28, 30.

1 SECTION 27. A party may appeal from the final order of a
 2 police, district or municipal court or trial justice as in other civil
 3 actions to the superior court, which shall make an appropriate order.
 4 If the respondent appeals, he shall give bond or recognize for the
 5 prosecution of his appeal and for the payment, if judgment is
 6 rendered against him, of any balance of the debt, with costs, which
 7 may remain unsatisfied after a sale of the property.

Appeal.
 G. S. 151, § 27.
 P. S. 192, § 29.

1 SECTION 28. Boarding house or lodging house keepers shall have
 2 a lien on the baggage and effects brought to their houses and be-

Lien of board-
 ing and lodg-
 ing house keepers.

1850, 220.
G. S. 157, § 29.
P. S. 192, § 31.
1897, 292.
19 Allen, 360.

longing to their guests, boarders or lodgers, except mariners, for 3
all proper charges due for fare and board or lodging, which may 4
be enforced as provided in the five preceding sections. 5

110 Mass. 158.

115 Mass. 70.

Lien for past-
uring, board-
ing and keep-
ing domestic
animals.
1877, 96.
1878, 208.
P. S. 192, §§ 32,
33.
139 Mass. 126.
146 Mass. 76.
155 Mass. 481.
161 Mass. 512.

SECTION 29. Persons having proper charges due them for past- 1
uring, boarding or keeping horses or other domestic animals which 2
are brought to their premises or placed in their care by or with 3
the consent of the owners thereof, shall have a lien on such animals 4
for such charges, which may be enforced as provided in sections 5
twenty-three to twenty-seven, inclusive, except that the petition 6
may be filed at the expiration of ten days after a demand in writ- 7
ing, and the notice issued thereon may be served seven days before 8
the hearing. 9

Preceding
sections not
restrictive.
G. S. 151, § 30.
P. S. 192, § 34.

SECTION 30. The provisions of the preceding sections shall not 1
restrict the right of a person who has a lien upon property to hold 2
or dispose of it in any other lawful manner. 3

CHAPTER 199.

OF RECOGNIZANCES FOR DEBTS.

Recognizance
for debt.
1781, 36.
1782, 21, § 1.
R. S. 118, §§ 1-3.
G. S. 152, §§ 1-3.
P. S. 193, §§ 1-3.

SECTION 1. A person who is competent to contract by bond 1
may subject his person and property to be taken on execution by 2
entering into a recognizance before the superior court in any county, 3
substantially as follows:— 4

134 Mass. 525.

151 Mass. 393.

Be it remembered that on this _____ day of _____, _____, of _____, per-
sonally appeared before _____ and acknowledged himself to be indebted to
_____ of _____ in the sum of _____ to be paid to said _____ on the _____
day of _____, (or in _____ years, or in _____ months, from this day) with
interest from this day; and, if not then paid, to be levied upon his goods,
chattels, lands and tenements, and, for want thereof, upon his body. In witness
whereof said _____ hath hereto set his hand.

The clause as to the payment of interest may be altered or omitted 5
according to the agreement of the parties; but, unless the recogni- 6
zance otherwise expressly provides, interest shall be allowed for 7
any delay after the time for payment. 8

—to be re-
corded, etc.
1781, 36.
1782, 21, § 2.
R. S. 118, §§ 4,
5.
G. S. 152, § 4.
P. S. 193, § 4.

SECTION 2. The recognizance shall be attested by the clerk of 1
the court, shall be recorded at length in a book kept for the purpose 2
and the original shall then be delivered to the conusee. It shall 3
not be taken unless the justice who takes it knows or has sat- 4
isfactory evidence that the person offering to enter into it is the 5
person whom he represents himself to be and who is described as 6
the conusor. 7

Execution.
1781, 36.
1782, 21, § 2.
R. S. 118, §§ 6,
12, 16.
G. S. 152, §§ 5,
8, 12.

SECTION 3. If the debt is not paid at the time named in the 1
recognizance, the court may issue an execution in favor of the 2
conusee for the amount due, which shall be directed, served and 3
returned in like manner and have like effect as an execution issued 4

5 upon a judgment of said court. Such execution may be levied and
 6 shall be obeyed in any county to which it is directed. The conusee
 7 shall be entitled to an alias and other successive executions, as in a
 8 civil action.

P. S. 193, §§ 6,
 8, 12.

1 SECTION 4. Before such execution issues, the original recogni-
 2 zance shall be filed with the clerk, who shall compute the amount,
 3 deducting any payments indorsed, and shall issue an execution
 4 therefor in common form except that it shall recite the recognizance
 5 and state the amount then due. Such execution may be issued by
 6 the clerk without a special order of the court.

Execution.
 1781, 36.
 1782, 21, § 2.
 R. S. 118, §§ 7, 8.
 G. S. 152, § 6.
 P. S. 193, § 7.
 8 Mass. 79.

1 SECTION 5. If the conusee dies before the debt is paid, his
 2 executor or administrator may, upon exhibiting to the clerk his
 3 letters testamentary or of administration, take out the execution
 4 and the form thereof shall be altered accordingly.

Death of
 conusee.
 1781, 36.
 1782, 21, §§ 2, 3.
 R. S. 118, § 13.
 G. S. 152, § 9.
 P. S. 193, § 9.

1 SECTION 6. If the conusor dies before the debt is fully paid, no
 2 execution therefor shall be issued as of course, but his estate shall
 3 be liable for the debt in like manner as if judgment therefor had
 4 been rendered against him in his lifetime; and the conusee or his
 5 executor or administrator may recover the same from the executor,
 6 administrator, heirs or devisees of the conusor in an action of con-
 7 tract or by a scire facias.

—of conusor.
 R. S. 118, § 14.
 G. S. 152, § 10.
 P. S. 193, § 10.

1 SECTION 7. If one or more of several conusees or conusors dies
 2 before the debt is fully satisfied, the rights and obligations of the
 3 survivors and the proceedings for the recovery of the debt shall be
 4 substantially the same as in the case of the death of one or more
 5 joint judgment creditors or debtors.

—of one of sev-
 eral conusors
 or conusees.
 1782, 21, § 2.
 R. S. 118, § 17.
 G. S. 152, § 13.
 P. S. 193, § 13.

1 SECTION 8. No original execution shall be issued as of course
 2 upon such recognizance after the expiration of three years from the
 3 time therein named for payment of the debt or from the time of
 4 the last payment indorsed thereon, but the conusee or his execu-
 5 tor or administrator may after that time have a scire facias or an
 6 action of contract on it against the party liable, in like manner and
 7 with like effect as upon a judgment.

Limitation of
 time for issue
 of original
 execution.
 1781, 36.
 1782, 21, § 5.
 R. S. 118, § 15.
 G. S. 152, § 11.
 P. S. 193, § 11.

1 SECTION 9. A person who is injured by the wrongful issue or
 2 levy of an execution under the provisions of this chapter may have
 3 a writ of audita querela or other remedy as if the execution had
 4 been issued upon a judgment; and, except as otherwise expressly
 5 provided, the parties to such recognizance and their representatives
 6 shall be entitled and liable to the remedies provided for judgment
 7 creditors and debtors.

Remedy for
 wrongful
 execution.
 1781, 36.
 1782, 21, § 4.
 R. S. 118, § 18.
 G. S. 152, § 14.
 P. S. 193, § 14.

1 SECTION 10. The fee for taking and recording a recognizance
 2 shall be fifty cents; and for all other services under the provisions
 3 of this chapter the same fees shall be paid as for like services in
 4 other cases.

Fees.
 1781, 36.
 1782, 21, § 8.
 R. S. 118, § 19.
 G. S. 152, § 15.
 P. S. 193, § 15.

CHAPTER 200.

OF SEIZING AND LIBELLING FORFEITED PROPERTY.

Seizure of forfeited property.
1793, 43, § 1.
R. S. 118, § 20.
G. S. 153, § 1.
P. S. 194, § 1.
103 Mass. 456.
155 Mass. 10.

SECTION 1. Property which has been forfeited for an offence may, if no other provision is made, be seized by a person entitled to enforce the forfeiture or, except as otherwise provided, by a police officer or constable of the city or town in which the forfeited property is found, and shall be safely kept by him until it is disposed of as hereinafter provided.

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Libel by person making seizure.
1793, 43, § 2.
R. S. 118, § 21.
G. S. 153, § 2.
P. S. 194, § 2.
15 Gray, 166.

SECTION 2. The person who makes the seizure shall, within fourteen days thereafter, file a libel in the superior court, in a police, district or municipal court or with a trial justice, stating briefly the cause of the seizure without the details, and praying for a decree of forfeiture.

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Jurisdiction and venue of libel.
1793, 43, §§ 2, 3.
R. S. 118, §§ 22, 24.
G. S. 153, §§ 2, 3.
P. S. 194, § 3.

SECTION 3. If the value of the property seized exceeds twenty dollars, the libel may, and if such value exceeds one hundred dollars, shall, be filed in the superior court in the county in which the offence was committed; otherwise, it shall be filed in a police, district or municipal court, or with a trial justice, having jurisdiction of the offence. The value for such purpose shall be ascertained by an appraisal as hereinafter provided.

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Notice if libel is filed in superior court.
1793, 43, § 2.
R. S. 118, § 23.
G. S. 153, § 4.
P. S. 194, § 4.
1885, 384, § 1.

SECTION 4. Upon the filing of a libel in the superior court, the clerk shall issue an order of notice, stating briefly the substance of the libel, which the libellant shall cause to be published twice at least in a newspaper published in the county, the first publication to be not less than fourteen days before the return day.

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— if in police, etc., courts, etc.
1793, 43, § 3.
R. S. 118, §§ 31, 32, 34.
G. S. 153, §§ 13, 14.
P. S. 194, §§ 12, 13.

SECTION 5. If the libel is filed in a police, district or municipal court or with a trial justice, the court or justice shall issue an order of notice, stating briefly the substance of the libel and the time and place appointed for the hearing, which the libellant shall cause to be posted in a public place within the jurisdiction of such court or justice not less than seven days before the time appointed for the hearing.

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Proceedings.
1793, 43, § 2.
R. S. 118, §§ 24, 25.
G. S. 153, §§ 5, 6.
P. S. 194, §§ 5, 6.

SECTION 6. The libel shall be entered and conducted as a civil action; and if after notice no claimant appears, the court or trial justice shall, upon a hearing, decree a forfeiture, restoration or other appropriate disposition of the property. If a claimant appears, he may allege and answer any matter material for his defence, and either party shall be entitled to claim a jury trial upon issues of fact as in other civil actions.

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Decree.
1793, 43, § 2.
R. S. 118, § 26.
G. S. 153, § 7.
P. S. 194, § 7.

SECTION 7. If the libellant maintains his action, the court shall decree a forfeiture and sale of the property and a distribution of the proceeds, or other appropriate disposition thereof. If he fails to maintain it, the court shall decree a restitution of the property to the claimant.

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1 SECTION 8. If property is sold under such decree, the proceeds
2 shall be applied under the direction of the court to the payment of
3 the expenses of the seizure, prosecution and sale; and in default of
4 any other provision for the disposition of the residue, it shall be
5 paid to the person who made the seizure.

Disposition of
proceeds.
G. S. 153, § 8.
P. S. 194, § 8.

1 SECTION 9. If it is found that the seizure was groundless
2 and without probable cause, reasonable damages shall be assessed
3 for the claimant, and the court shall render judgment for such dam-
4 ages with costs.

Seizure with-
out probable
cause.
1793, 43, § 2.
R. S. 118, § 27.

G. S. 153, § 9.

P. S. 194, § 9.

1 SECTION 10. In all other cases the court shall award costs to
2 the prevailing party or may order the costs and charges of keeping
3 and selling the property or any part thereof, to be paid out of the
4 proceeds.

Costs.
1793, 43, § 2.
R. S. 118, § 28.
G. S. 153, § 10.
P. S. 194, § 10.

1 SECTION 11. Property which is alleged to have been forfeited
2 may, after its seizure, be delivered to the owner, or a person en-
3 titled to claim the same, upon his giving to the person who made
4 the seizure a bond in double the value of the property, with suffi-
5 cient surety, conditioned to restore the property, or pay the ap-
6 praised value thereof if it is decreed forfeited, and to abide by and
7 perform the final order, decree or judgment.

Delivery of
property to
claimant.
1793, 43, § 1.
R. S. 118, § 36.
G. S. 153, § 17.
P. S. 194, § 16.

1 SECTION 12. The value of the property shall be determined by
2 three disinterested persons appointed by the parties or by a justice
3 of the peace to whom the claimant applies therefor, or if the ap-
4 praisal is made after the libel has been filed, by the court or justice
5 before whom it is pending.

Appraisal on
application of
claimant.
1793, 43, § 1.
R. S. 118, § 37.
G. S. 153, § 18.
P. S. 194, § 17.

1 SECTION 13. The person who makes the seizure shall forthwith,
2 unless an application for an appraisal has been made by a claimant,
3 apply to a justice of the peace, who shall appoint three disinterested
4 persons to make an inventory and appraisal of the property seized.
5 Such appraisers shall be sworn and shall return their inventory and
6 appraisal to the court or justice before whom the libel is pending.

— on applica-
tion of person
making seiz-
ure.
1793, 43, § 1.
R. S. 118, § 38.
G. S. 153, § 19.
P. S. 194, § 18.

1 SECTION 14. The appraisal, under the provisions of section
2 twelve, if any, otherwise, under the provisions of section thirteen,
3 shall be conclusive as to the jurisdiction of the court in which the
4 libel is to be filed.

— to be conclu-
sive as to juris-
diction.
1793, 43, § 1.
R. S. 118, § 39.
G. S. 153, § 20.
P. S. 194, § 19.

1 SECTION 15. If appraisers who are appointed under the pro-
2 visions of section thirteen certify that property so seized is perish-
3 able and liable to depreciate in value by being kept any police,
4 district or municipal court or any trial justice may order a sale by
5 auction of such property at such time and after such notice as the
6 order, which shall be indorsed on the inventory, shall direct; but
7 the provisions of this section shall not affect the power of the court
8 in which the libel is pending to order a sale of the property for
9 sufficient cause at any time during the pendency of the libel.

Sale of perish-
able goods.
R. S. 118, §§ 40,
41.
G. S. 153, §§ 21,
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P. S. 194, §§ 20,
21.

CHAPTER 201.

OF CLAIMS AGAINST THE COMMONWEALTH.

Jurisdiction of
petition; ser-
vice.
1879, 255, §§ 1-3.
P. S. 195, §§ 1, 2.
1887, 246.
152 Mass. 28.
174 Mass. 335.

SECTION 1. The superior court for the county of Suffolk shall have jurisdiction of all claims at law or in equity against the commonwealth. Such claims may be enforced by petition stating clearly and concisely the nature of the claim and the damages demanded, and such petition shall be served by the sheriff of the county of Suffolk or any of his deputies by leaving an attested copy thereof in the hands or in the office of the attorney general, and a like copy in the hands or in the office of the secretary of the commonwealth, thirty days at least before the return day thereof.

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Proceedings.
1879, 255, §§ 2, 3.
P. S. 195, § 3.
1887, 246.
174 Mass. 335.

SECTION 2. The provisions of law relative to tender, offer of judgment, set-off and recoupment shall apply to such petition, and the case shall be tried by the court without a jury and, if the amount claimed is more than one thousand dollars, by three justices of said court. All hearings shall be in open court and questions of law may be taken to the supreme judicial court as in other cases.

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Decision in
favor of claim-
ant.
1879, 255, § 4.
P. S. 195, § 4.

SECTION 3. If the final decision is in favor of the claimant, the chief justice of the superior court shall certify to the governor the amount found due, with the legal costs; and the governor shall draw his warrant for such amount on the treasurer and receiver general, who shall pay the same from any appropriations made for the purpose by the general court.

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Judgment in
favor of com-
monwealth.
1879, 255, § 4.
P. S. 195, § 5.

SECTION 4. If the decision is in favor of the commonwealth, judgment for costs and execution thereon shall issue in its favor against the claimant; and if such judgment is final, the claim shall be forever barred.

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Limitation of
time.
1879, 255, § 5.
P. S. 195, § 6.

SECTION 5. The provisions of law relative to the limitation of actions shall apply to claims against the commonwealth and to the remedy herein provided.

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TITLE V.

CHAPTER 202.

OF THE LIMITATION OF ACTIONS.

SECTIONS 1-19. — Limitation of Personal Actions.

SECTIONS 20-30. — Limitation of Real Actions and Rights of Entry.

SECTION 31. — Proceedings upon Failure of Original Action.

LIMITATION OF PERSONAL ACTIONS.

- 1 SECTION 1. The following actions shall be commenced only
2 within twenty years next after the cause of action accrues :
3 First, Actions upon contracts under seal.
4 Second, Actions upon bills, notes or other evidences of indebted-
5 ness issued by a bank.
6 Third, Actions upon promissory notes which have been signed
7 in the presence of an attesting witness, if brought by the original
8 payee or by his executor or administrator.
9 Fourth, Actions upon contracts which are not limited by the pro-
10 visions of the following section or by any other provision of law.
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|--------------|----------------|----------------|----------------|
| 4 Cush. 176. | 10 Cush. 92. | 124 Mass. 149. | 142 Mass. 12. |
| 5 Cush. 442. | 1 Gray, 261. | 125 Mass. 446. | 150 Mass. 166. |
| 6 Cush. 493. | 115 Mass. 584. | 126 Mass. 342. | 167 Mass. 74. |
| 8 Cush. 365. | 594, 599. | 134 Mass. 245. | 170 Mass. 286. |

- 1 SECTION 2. The following actions shall, except as otherwise
2 provided, be commenced only within six years next after the cause
3 of action accrues :
4 First, Actions of contract founded upon contracts or liabilities,
5 express or implied, except actions limited by the provisions of the
6 preceding section or actions upon judgments or decrees of courts
7 of record of the United States or of this or of any other state of
8 the United States.
9 Second, Actions of tort.
10 Third, Actions of replevin.
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|----------------|----------------|---------------------|----------------|
| 130 Mass. 373. | 150 Mass. 158. | 110 Mass. 345, 454. | 117 Mass. 359. |
| 142 Mass. 383. | 159 Mass. 17. | 162 Mass. 412. | 170 Mass. 63. |
| | | 168 Mass. 133, 234. | 173 Mass. 233. |

- 1 SECTION 3. Actions against sheriffs for the misconduct or negli-
2 gence of their deputies shall be commenced only within four years
3 next after the cause of action accrues. G. S. 155, § 3.
P. S. 197, § 2. 10 Met. 244. 12 Cush. 161. 4 Gray, 295.

- 1 SECTION 4. Actions for assault and battery, for false imprison-
2 ment, for slander or libel and actions against executors, adminis-
3 trators, guardians, trustees, sheriffs, deputy sheriffs, constables or
4 assignees in insolvency, for the taking or conversion of personal
5 property, shall be commenced only within two years next after the
6 cause of action accrues.

Actions for penalties.
1788, 12, § 1.
R. S. 120, §§ 21, 22.
G. S. 155, §§ 20, 21.
P. S. 197, §§ 4, 5.
11 Cush. 512.
6 Gray, 338.
134 Mass. 471.
145 Mass. 311.

SECTION 5. Actions for penalties or forfeitures under penal statutes, if brought by a person to whom the penalty or forfeiture is given in whole or in part, shall be commenced only within one year next after the offence is committed. But if the penalty or forfeiture is given in whole or in part to the commonwealth, an action therefor by or in behalf of the commonwealth may be commenced within two years after the offence is committed.

Mutual current account.

R. S. 120, § 5.
G. S. 155, § 5.
P. S. 197, § 8.
3 Pick. 96.
3 Met. 216.
11 Cush. 258.

SECTION 6. In an action of contract brought to recover the balance due upon a mutual and open account current, the cause of action shall be held to have accrued at the time of the last item proved in the account.

136 Mass. 30.

4 Allen, 108.
144 Mass. 35.

97 Mass. 476.
154 Mass. 472.

118 Mass. 486.
173 Mass. 233.

Disabilities.
1718-19, 10, § 2.
1740-1, 4, § 4.
1748-9, 17, § 2.
1770-1, 9, § 6.
1786, 52, § 4.
R. S. 120, § 6.

SECTION 7. If the person entitled thereto is a minor, or is insane or imprisoned when a right to bring such action first accrues, the action may be commenced within the time hereinbefore limited after the disability is removed.

G. S. 155, § 6.

1880, 13.

P. S. 197, § 9.

136 Mass. 564.

Same subject.
R. S. 120, § 8.
G. S. 155, § 8.
P. S. 197, § 10.

SECTION 8. If a person is disabled from commencing an action by reason of his being a subject or citizen of a country which is at war with the United States, the time of the continuance of such war after the cause of action accrues shall be excluded in determining the period herein limited for the commencement of the action.

Suspension in case of non-resident defendant.
1748-9, 17, § 3.
1770-1, 9, § 7.
1786, 52, § 4.
R. S. 120, § 9.
G. S. 155, § 9.
1880, 98.
P. S. 197, § 11.
1 Pick. 263.
5 Gray, 397.
15 Gray, 349.
10 Allen, 433.
100 Mass. 167.
109 Mass. 40.
416.
118 Mass. 337.

SECTION 9. If, when a cause of action hereinbefore mentioned accrues against a person, he resides out of the commonwealth, the action may be commenced within the time herein limited after he comes into the commonwealth; and if, after a cause of action has accrued, the person against whom it has accrued resides out of the commonwealth, the time of such residence shall be excluded in determining the time limited for the commencement of the action; but no action shall be brought by any person upon a cause of action which was barred by the laws of any state, territory or country while he resided therein.

125 Mass. 574.

145 Mass. 370.

146 Mass. 20.

147 Mass. 81.

Extension of time in case of death.
1793, 75, § 3.
R. S. 120, § 10.
G. S. 155, § 10.
P. S. 197, § 12.
11 Met. 445.
5 Allen, 27.
109 Mass. 416.
145 Mass. 489.
146 Mass. 20.

SECTION 10. If a person who is entitled to bring or liable to any action before mentioned dies before the expiration of the time herein limited, or within thirty days after the expiration of said time, and the cause of action by law survives, the action may be commenced by the executor or administrator at any time within the period within which the deceased might have brought the action or within two years after his giving bond for the discharge of his trust and against the executor or administrator in accordance with the limitations provided by chapter one hundred and forty-one, relative to the limitation of actions against the executor or administrator by creditors of the deceased.

— in case of fraudulent concealment.
R. S. 120, § 12.
G. S. 155, § 12.
P. S. 197, § 14.

SECTION 11. If a person who is liable to a personal action fraudulently conceals the cause of such action from the knowledge of the person who is entitled to bring it, the period prior to the dis-

4 covery of his cause of action by the person who is so entitled shall
 5 be excluded in determining the time limited for the commencement
 6 of the action.

138 Mass. 570. 144 Mass. 313. 9 Pick. 212.
 145 Mass. 484. 162 Mass. 412. 4 Cush. 208.
 8 Allen, 130.
 118 Mass. 147.
 134 Mass. 372.

1 SECTION 12. No acknowledgment or promise shall be evidence
 2 of a new or continuing contract whereby to take an action of con-
 3 tract out of the operation of the provisions of this chapter or to
 4 deprive a party of the benefit thereof, unless such acknowledgment
 5 or promise has been made by, or is contained in, a writing signed
 6 by the party who is chargeable thereby.

3 Cush. 355. 7 Gray, 274, 387. 137 Mass. 504. 168 Mass. 133.
 6 Cush. 151. 116 Mass. 529. 159 Mass. 245. 134, 249.

1 SECTION 13. The provisions of the preceding section shall not
 2 alter or impair the effect of a payment of principal or interest made
 3 by any person; but no indorsement or memorandum of any such
 4 payment, written or made upon a promissory note, bill of exchange
 5 or other writing by or on behalf of the party to whom such payment
 6 has been made, or purports to have been made, shall be sufficient
 7 proof of the payment to take the case out of the provisions of this
 8 chapter.

122 Mass. 558. 123 Mass. 588. Effect of part
 124 Mass. 174. 130 Mass. 199. 132 Mass. 30. 154 Mass. 472. payment.
 1834, 182, §§ 1, 3.
 R. S. 120, § 17.
 G. S. 155, § 17.
 P. S. 197, § 16.
 2 Met. 168.
 6 Met. 553.
 8 Met. 352.
 9 Met. 482.
 6 Cush. 172.
 7 Gray, 274, 387.
 11 Allen, 523.
 97 Mass. 8.

1 SECTION 14. A joint contractor or his executor or administrator
 2 shall not lose the benefit of the provisions of this chapter so as to
 3 be chargeable by reason only of an acknowledgment or promise
 4 made or signed, or by reason of a payment made by, any other
 5 joint contractor or his executor or administrator.

14 Pick. 387. 2 Allen, 245. 123 Mass. 588. 156 Mass. 34. Promise or
 payment by
 joint con-
 tractor, etc.
 1834, 182, § 1.
 R. S. 120, §§ 14,
 18.
 G. S. 155, § 14.
 P. S. 197, § 17.

1 SECTION 15. If, in actions against two or more joint contractors
 2 or against the executor or administrator of a joint contractor, it
 3 appears that the plaintiff is barred by the provisions of this chapter
 4 as to one or more of such contractors, but is entitled to recover
 5 against any other or others of them by virtue of a new acknowl-
 6 edgment or promise or otherwise, judgment shall be given for the plain-
 7 tiff as to the defendants against whom he is entitled to recover, and
 8 for the defendant or defendants who are not liable.

Judgment in
 such case.
 1834, 182, § 1.
 R. S. 120, § 15.
 G. S. 155, § 15.
 P. S. 197, § 18.

1 SECTION 16. An answer in abatement which alleges the non-
 2 joinder of a party defendant to an action of contract shall be over-
 3 ruled if it appears, upon issue joined, that the action as against him
 4 was barred by limitation.

P. S. 197, § 19. Plea in abate-
 ment.
 1834, 182, § 2.
 R. S. 120, § 16.
 G. S. 155, § 16.

1 SECTION 17. The limitations of the preceding sections of this
 2 chapter, and of section thirty-one so far as it applies to personal
 3 actions, shall apply to actions brought by the commonwealth or for
 4 its benefit.

P. S. 197, § 21. Actions by
 common-
 wealth.
 R. S. 120, § 20.
 G. S. 155, § 19.

1 SECTION 18. If a special provision is otherwise made relative to
 2 the limitation of any action, the provisions of this chapter which are
 3 inconsistent therewith shall not apply.

R. S. 120, §§ 4, 23. G. S. 155, § 22. P. S. 197, § 22. Special
 limitations.
 1786, 52, § 5.
 1788, 12, § 1.

Presumption
of satisfaction
of judgment.
R. S. 120, § 24.
G. S. 155, § 23.
P. S. 197, § 23.
22 Pick. 533.
136 Mass. 280.

SECTION 19. A judgment or decree of a court of record of the United States or of this or any other state of the United States shall be presumed to be paid and satisfied at the expiration of twenty years after it was rendered.

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LIMITATION OF REAL ACTIONS AND RIGHTS OF ENTRY.

Actions for
recovery of
land.
1786, 13.
1807, 75, § 1.
R. S. 119, § 1.
G. S. 154, § 1.
P. S. 196, § 1.
7 Met. 24.
8 Met. 87.
142 Mass. 389.

SECTION 20. An action for the recovery of land shall be commenced, or an entry made thereon, only within twenty years after the right of action or of entry first accrued, or within twenty years after the demandant or the person who makes the entry, or those under whom they claim, have been seised or possessed of the premises, except as hereinafter provided.

156 Mass. 280. 172 Mass. 395.

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When the
twenty years
begin to run.
R. S. 119, § 2.
G. S. 154, § 2.
P. S. 196, § 2.

SECTION 21. If such right or title first accrued to an ancestor or predecessor of the person who brings the action or makes the entry, or to any other person under whom he claims, the twenty years shall be computed from the time when the right or title so first accrued.

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Same subject.
R. S. 119, § 3.
G. S. 154, § 3.
P. S. 196, § 3.
9 Mass. 508.
15 Mass. 471.
8 Met. 87.
10 Cush. 241.
15 Gray, 322.
14 Allen, 516.
110 Mass. 161.
119 Mass. 414.
150 Mass. 297.

SECTION 22. In the construction of sections twenty to thirty, inclusive, of this chapter, the right of entry or of action to recover land shall be held to have first accrued at the times, respectively, hereinafter mentioned :

First, If a person has been disseised, at the time of such disseisin.

Second, If he claims as heir or devisee of a person who at his death was seised, at the time of such death : but if a tenancy by the curtesy or other estate intervened after the death of such ancestor or deviser, at the time when such intermediate estate expired or would have expired by its own limitation.

Third, If there has been such intermediate estate or if a person claims under a remainder or reversion, so far as his right is affected by the limitation herein prescribed, at the time when the intermediate or precedent estate would have expired by its own limitation, notwithstanding any forfeiture thereof for which he might have entered at an earlier time. The provisions of this clause shall not prevent a person from entering if entitled so to do by reason of any forfeiture or breach of condition : but in such case, his right shall be held to have accrued when the forfeiture was incurred or the condition was broken.

Fourth, In all cases in which no other express provision is made, at the time when the claimant or the person under whom he claims first became entitled to the possession of the premises under the title upon which the entry or the action is founded.

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Corporation
sole.
1828, 137, § 1.
R. S. 119, § 4.
G. S. 154, § 4.
P. S. 196, § 4.

SECTION 23. If a corporation sole is disseised, any of its successors may enter upon the premises, or commence an action for the recovery thereof, within five years after the death, resignation or removal of the disseisee.

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Disabilities.
1697, 22, § 1.
1786, 13, § 4.
R. S. 119, § 5.
G. S. 154, § 5.

SECTION 24. If, when such right of entry or of action first accrues, the person who is entitled thereto is a minor, or is insane, imprisoned or absent from the United States, he, or a person who claims

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4 under him, may make the entry or commence the action within ten P. S. 196, § 5.
5 years after such disability is removed. 4 Mass. 182.

2 Allen, 306.

3 Allen, 328.

10 Allen, 557.

1 SECTION 25. If the person who is first entitled to such right Death during
2 of entry or of action dies while under any of the disabilities men- disability.
3 tioned in the preceding section and there has been no determina- R. S. 119, § 6.
4 tion of, or judgment upon, the title, right or action which accrued G. S. 154, § 6.
5 to him, the entry may be made or the action commenced by his P. S. 196, § 6.
6 heirs, or by any other person who claims under him, within ten
7 years after his death.

1 SECTION 26. If, when such right of entry or of action first ac- Successive
2 cures, the person who is entitled thereto is under any of such dis- disabilities.
3 abilities and dies without having recovered the premises, no further R. S. 119, § 7.
4 time for making such entry or commencing such action than is G. S. 154, § 7.
5 hereinbefore prescribed shall be allowed by reason of the disability P. S. 196, § 7.
6 of any other person. 6 Mass. 328.

1 SECTION 27. No person shall be held to have been in possession Requisites of
2 of land within the meaning of this chapter merely by reason of effectual entry.
3 having made an entry thereon, unless he has continued in open and R. S. 119, § 8.
4 peaceable possession thereof for one year next after such entry or G. S. 154, § 8.
5 unless an action has been commenced upon such entry and seisin P. S. 196, § 8.
6 within one year after he was ousted or dispossessed. 2 Met. 583.
8 Met. 599.

1 SECTION 28. If the right of entry or of action of a tenant in Estates tail.
2 tail, or of a person who is entitled to a remainder in tail, is barred R. S. 119, § 9.
3 by the provisions of this chapter, the estate tail and all remainders G. S. 154, § 9.
4 and reversions expectant thereon shall also be barred, as fully as P. S. 196, § 9.
5 they might have been by a conveyance made by the tenant in tail
6 in the manner provided in chapter one hundred and twenty-seven.

1 SECTION 29. If a person who is entitled to recover land as a Same subject.
2 tenant in tail or as a remainderman dies before the expiration of R. S. 119, § 10.
3 the period hereinbefore limited for making an entry or commencing G. S. 154, § 10.
4 an action therefor, no person who claims any estate which the tenant P. S. 196, § 10.
5 in tail or remainderman might have barred shall make an entry or
6 commence an action to recover such land, except within the period
7 during which the tenant in tail or remainderman, if he had so long
8 lived, might have made such entry or commenced such action.

1 SECTION 30. No action for the recovery of land shall be com- Actions by the
2 menced by or in behalf of the commonwealth, except within twenty common-
3 years after its right or title thereto first accrued, or within twenty wealth.
4 years after it or those under whom it claims have been seised or R. S. 119, § 12.
5 possessed of the premises; but the provisions of this section shall G. S. 154, § 12.
6 not apply to the province lands in the town of Provincetown lying 1867, 275.
7 north and west of the line fixed by section four of chapter ninety- P. S. 196, § 11.
8 six, to the Back Bay lands, so called, in the city of Boston, nor to 1893, 470, § 4.
9 any property, right, title or interest of the commonwealth below 4 Mass. 522.
10 high water mark or in the great ponds. 152 Mass. 450.
172 Mass. 396.

PROCEEDINGS UPON FAILURE OF ORIGINAL ACTION.

Extension of
time in case of
abatement.
1770-1, 9, § 3.
1793, 75, § 2.
R. S. 119, § 15;
120, § 11.
G. S. 154, § 15;
155, § 11.
P. S. 196, § 12;
197, § 13.
12 Met. 15.
9 Cush. 417.
1 Gray, 586.
7 Gray, 165.
130 Mass. 419.
174 Mass. 171.

SECTION 31. If, in an action which has been duly commenced 1
within the time limited in this chapter, the writ fails of a sufficient 2
service or return by reason of an unavoidable accident or of a 3
default or neglect of the officer to whom it is committed, or if the 4
writ is abated or if the action is otherwise avoided or defeated by 5
the death of a party thereto or for any matter of form, or if, after a 6
verdict for the plaintiff or demandant, the judgment is arrested, or 7
if a judgment for the plaintiff or demandant is reversed, the plain- 8
tiff or demandant or any person who claims under him may com- 9
mence a new action for the same cause within one year after the 10
abatement or other determination of the original action, or after the 11
reversal of the judgment; and if the cause of action by law sur- 12
vives, the executor or administrator of the plaintiff or the heir or 13
devisee of the demandant may commence such new action within 14
said year. 15

TITLE VI.

OF COSTS, AND OF THE FEES OF CERTAIN OFFICERS.

CHAPTER 203. — Of Costs in Civil Actions.

CHAPTER 204. — Of the Fees of Certain Officers.

CHAPTER 203.

OF COSTS IN CIVIL ACTIONS.

SECTION 1. In civil actions the prevailing party shall recover his costs, except as otherwise provided.

R. S. 121, § 1.
G. S. 156, § 1.
P. S. 198, § 1.

7 Met. 590.
8 Met. 272.
2 Cush. 325.

4 Gray, 201.
1 Allen, 212.
3 Allen, 468.

102 Mass. 122.
123 Mass. 318.
126 Mass. 232, 290.

Prevailing
party to re-
cover costs.
1784, 28, § 9.

SECTION 2. If a discontinuance or a nonsuit is entered in an action solely in consequence of an answer of the defendant which alleges his discharge in bankruptcy or insolvency, the defendant shall recover no costs. If issue is joined upon such defence solely and judgment is rendered for the defendant, he shall recover his costs after, but not before, the joinder of such issue.

Costs if defend-
ant insolvent.
1841, 124, § 4.
1843, 55.
1848, 267.
G. S. 156, §§ 2, 3.
P. S. 198, §§ 2, 3.
4 Cush. 500.

SECTION 3. If, in a civil action before a police, district or municipal court or a trial justice, the plaintiff appeals from a judgment in his favor or if the defendant appeals from a judgment in his favor upon a demand in set-off and does not recover in the superior court a greater amount for debt or damages than he recovered by the first judgment, he shall recover no costs arising after the appeal, and shall pay the costs of the appellee arising after the appeal.

— on appeals
from police
courts, etc.
1825, 92.
R. S. 121, § 2.
G. S. 156, § 4.
1877, 236, § 1.
P. S. 198, § 4.

SECTION 4. If, in an action of contract or replevin which is commenced in the supreme judicial court, the plaintiff does not recover, either in damages or in the value of the property claimed, an amount equal to three hundred dollars, which shall be assessed by the jury which tries the cause, by an assessor agreed upon by the parties, or by an award of arbitrators, he shall recover no costs.

— in supreme
judicial court.
1859, 136, § 30.
G. S. 156, § 7.
P. S. 198, § 8.

SECTION 5. If, in a personal action, except an action of replevin or an action under the provisions of section fifteen of chapter one hundred and ninety-six, which is commenced in the superior court, the plaintiff does not recover final judgment for more than twenty dollars for debt or damages, he shall recover no costs, unless the right to an easement or the title to land is drawn in question and the justice before whom the action is tried so certifies, or unless the

— in superior
court.
1740-1, 4, § 3.
1770-1, 9, § 5.
1786, 52, § 3.
1807, 123, § 2.
R. S. 121, §§ 3,
11.
1838, 165, § 2.
G. S. 156, §§ 5, 6.
1862, 36.
P. S. 198, §§ 5-7.
13 Met. 144.

6 Cush. 275.
8 Cush. 289.
12 Cush. 457.
1 Gray, 625.
2 Gray, 336.

plaintiff's claim, as established on the trial, exceeds twenty dollars 8
and is reduced to that amount or less by set-offs which could not 9
have been proved in payment. 10

11 Gray, 486.
2 Allen, 268.

10 Allen, 68.
11 Allen, 362.

14 Allen, 159.
100 Mass. 191.

133 Mass. 470.
134 Mass. 14.

Costs if de-
fendant brings
money into
court.

R. S. 121, § 14.
G. S. 156, § 8.
P. S. 198, § 9.

SECTION 6. If a defendant brings money into court and offers 1
it in satisfaction of the damages, the plaintiff shall recover the costs 2
which had previously accrued, although he may not recover a larger 3
amount than is so brought into court. 4

— in real ac-
tions and in
replevin.

R. S. 121, § 13.
G. S. 156, § 9.

SECTION 7. The prevailing party in a real action or in an action 1
of replevin shall, except as provided in section four, recover costs 2
irrespective of the amount of damages recovered. P. S. 198, § 10. 3

— in unneces-
sary actions.

1743-4, 23.
1784, 28, § 12.
R. S. 121, § 15.
G. S. 156, § 10.
1879, 226, § 2.
P. S. 198, § 11.
10 Cush. 303.

SECTION 8. A plaintiff who brings several actions in the same or 1
in different courts against the same defendant upon causes of action 2
which might have been joined in one action, or who brings separate 3
actions against defendants who might have been joined, shall re- 4
cover costs in one action only, unless the court, after a hearing, 5
otherwise orders. 6

— in cases
tried together.

1892, 231.

SECTION 9. If two or more cases are tried together in the su- 1
preme judicial court, in the superior court or in a police, district 2
or municipal court, the presiding judge may reduce the witness fees 3
and other costs; but not less than the ordinary witness fees and 4
other costs recoverable in one of the cases which are so tried to- 5
gether shall be allowed. 6

— if plaintiff
prevails on
certain counts
only.

R. S. 121, § 16.
G. S. 156, § 11.
P. S. 198, § 12.
1 Met. 291.
2 Met. 599.
2 Cush. 180.
4 Cush. 148.
179 Mass. 162.

SECTION 10. If a verdict is rendered for the plaintiff upon one 1
or more counts upon several and distinct causes of action, and for 2
the defendant upon any other or others, each party shall recover 3
costs for the travel and attendance of witnesses, for depositions and 4
for other evidence produced, examined or used on the trial of the 5
counts upon which the verdict is in his favor, but shall not recover 6
for the like charges incurred on the trial of the other counts. 7

Second action
for same cause
stayed, when.

1829, 128, § 3.
R. S. 121, § 17.
G. S. 156, § 12.
P. S. 198, § 13.
100 Mass. 409.

SECTION 11. If a judgment for costs upon a nonsuit or discon- 1
tinuance remains unsatisfied, the court in which a second action for 2
the same cause is brought may order proceedings therein to be 3
stayed until such costs have been paid, and may further order that 4
the action be dismissed unless they are paid within a time expressed 5
in the order. 6

Taxation of
double or
treble costs.

1822, 105, § 1.
R. S. 121, § 18.
G. S. 156, § 13.
P. S. 198, § 14.

SECTION 12. If double or treble costs are allowed, the witness 1
fees, the cost of taking depositions, of procuring evidence and of 2
copies and all court dues, shall be taxed and recovered singly, and 3
the remainder only of the taxable costs shall be doubled or trebled. 4

Costs in suits
for discovery.

1841, 129.
G. S. 156, § 15.
P. S. 198, § 16.
1 Met. 237.

SECTION 13. In suits in equity in which, as to one or more of 1
the defendants, the plaintiff seeks merely for a discovery of facts 2
which are material to his rights and interests in a pending or antici- 3
pated suit, and not for a decree against them, the court shall allow 4
such defendants all their reasonable costs and expenditures, accord- 5
ing to the usual course of proceedings in equity in like cases, 6

7 although the plaintiff prays for a decree, if the court is satisfied
8 that the prayer is frivolous, a mere pretence, or is not essentially
9 connected with the subject matter of the discovery.

1 SECTION 14. In suits in equity and in other civil actions and
2 proceedings in which no provision is expressly made by law, the
3 costs shall be wholly in the discretion of the court, but no greater
4 amount shall be taxed therein than is allowed for similar charges in
5 actions at law. Costs in dis-
cretion of
court, when.
1826, 109, § 5.
R. S. 121, § 20.
G. S. 156, § 16.
P. S. 198, § 17.

1 Allen, 212.

104 Mass. 363.

1 SECTION 15. In civil actions and in proceedings which are insti- — in actions by
2 tuted by, or in the name of, the commonwealth, and not at the the common-
3 relation, in behalf, or for the use, of a private person, the com- wealth.
4 monwealth shall be liable for costs in the manner and to the same R. S. 121, § 22.
5 extent as a natural person. G. S. 156, § 17.
P. S. 198, § 18.
4 Gray, 25.

1 SECTION 16. A private person at whose relation, for whose use — in such ac-
2 or in whose behalf an action or proceeding is commenced in the tions brought
3 name of the commonwealth or of the attorney general shall be liable in behalf of
4 for costs in the manner, and to the same extent, as if the action or private person.
5 proceeding had been begun in his own name. R. S. 121, § 23.
G. S. 156, § 18.
P. S. 198, § 19.

1 SECTION 17. If a judgment for costs is rendered against the — judgments
2 commonwealth, the treasurer of the county to which the costs in for, against
3 such case would have been paid had the judgment been in favor of the common-
4 the commonwealth shall pay it upon the production of an attested wealth.
5 copy thereof: but if the costs would have been paid into the R. S. 121, § 24.
6 treasury of the commonwealth had the judgment been in favor of G. S. 156, § 19.
7 the commonwealth, the treasurer and receiver general shall pay it 1862, 144.
8 upon the production of an attested copy thereof. P. S. 198, § 20.

1 SECTION 18. If costs are taxed for the commonwealth, no fees No travel for
2 shall be taxed or allowed for the travel of the attorney general or attorney gen-
3 of any other attorney for the commonwealth. eral.
1813, 182, § 2.

R. S. 121, § 25.

G. S. 156, § 20.

P. S. 198, § 21.

1 SECTION 19. The provisions of this chapter shall not take away Powers of
2 or control the power of arbitrators or referees to award costs; nor arbitrators and
3 the power of a court to require costs to be paid by either party as courts.
4 the condition of an amendment, continuance or other order which 1786, 52, § 3.
5 is passed upon his motion, or to withhold and refuse costs on like R. S. 121, §§ 21,
6 occasions. 26.
103 Mass. 580. 108 Mass. 232. G. S. 156, § 21.
P. S. 198, § 22.
8 Allen, 431.

1 SECTION 20. Costs shall be taxed by the clerk of the court, or, By whom costs
2 in actions before a court which has no clerk, or before a trial justice, shall be taxed;
3 by the justice. No costs shall be taxed without notice to an ad- notice, etc.
4 verse party who gives seasonable notice in writing to the clerk or 1728-9, 2, § 1.
5 justice of his desire to be present at the taxation, or who causes such 1829, 52, § 1.
6 notice to be entered on the docket. Notice given by or to the attor- R. S. 121, § 27.
7 ney in the action shall be equivalent to notice by or to the party. G. S. 156, § 22.
P. S. 198, § 23.
9 Met. 316.
6 Allen, 514.

1 SECTION 21. Either party may appeal from the taxation by the Appeal from
2 clerk to the court in which the action is pending, or to a justice taxation.
3 thereof. 1829, 52, § 1.
P. S. 198, § 24. 1 Gray, 420. 104 Mass. 363. R. S. 121, § 28.
G. S. 156, § 23.

Costs, execution for, pending appeal.
1829, 52, § 1.
R. S. 121, § 30.
G. S. 156, § 25.
P. S. 198, § 26.
148 Mass. 603.

SECTION 22. If the appellant is liable for the costs, the appellee may take out execution and cause it to be satisfied, if he first gives bond with sufficient surety or sureties, who shall be approved by the clerk, in a sum equal to the costs, payable to the appellant, conditioned to repay such part of the costs as may be disallowed upon the appeal, and to perform such other order as the court or justice shall make thereon.

— of such appeal, allowance of, etc.
1829, 52, § 2.
R. S. 121, § 31.
G. S. 156, § 26.
P. S. 198, § 27.
102 Mass. 116.
135 Mass. 570.

SECTION 23. The costs incurred by the appeal may be allowed to either party by the court or justice before whom such appeal is heard, and they may be added to or deducted from the costs awarded in the principal action or may be collected upon a separate execution.

158 Mass. 274.

— items of, in supreme judicial court and superior court.
1701-2, 7, § 3.
1786, 73.
1795, 41, § 1.
R. S. 121, §§ 32-34, 36.
1842, 67.
1851, 233, § 118.
1852, 312, § 81.
1855, 449, § 7.
1856, 246.
G. S. 156, § 27.
1861, 163.
P. S. 198, § 28.
1882, 264, § 1.
1 Met. 243.
16 Gray, 287.
102 Mass. 80.
119 Mass. 83.
137 Mass. 138.
174 Mass. 67.

SECTION 24. There shall be allowed as costs in a civil action in the supreme judicial court or in the superior court, in addition to other disbursements allowed by law, as follows:—

For the entry fee, three dollars.

For the declaration, fifty cents.

For an attorney's fee, if an issue in law or fact is joined, two dollars and fifty cents; if not, one dollar and twenty-five cents.

For a term fee, five dollars for each sitting while the action is pending, not exceeding three sittings, except by an order of the court. If an action or if any question of law therein is carried to the full court, two additional term fees may be allowed. If the defendant is defaulted without having appeared, only one term fee shall be allowed.

For travel, except to carry to, or to take from, the clerk's office any writ or process, thirty-three cents for every ten miles, not exceeding eighty miles out and home, unless the party, his agent or attorney actually travels more than forty miles for the express purpose of attending the court in such cause. In such case, allowance may be made, in the discretion of the court, according to the distance actually travelled.

— when place for trial is designated.
1882, 264, § 2.

SECTION 25. If the shire town in which a case shall be tried has been designated under the provisions of section eighty-two of chapter one hundred and seventy-three, no costs shall be allowed for sittings held in any other town than the town so designated unless the action is actually tried in such other town by agreement of the parties.

— of printing briefs.
1865, 33.
P. S. 198, § 29.

SECTION 26. The prevailing party shall be allowed not more than ten dollars, as the court considers reasonable, for expenses actually incurred in printing the briefs which may be required for the argument of the case at the law sitting of the supreme judicial court.

— items of, in police courts, etc.
1786, 73.
1795, 41, § 1.
R. S. 121, §§ 32-34, 36.
G. S. 156, § 27.
1870, 151, § 3.
1876, 227, § 5.
P. S. 198, § 30.

SECTION 27. There shall be allowed as costs in a civil action in a police, district or municipal court or before a trial justice, except actions by the trustee process, in addition to other disbursements allowed by law, as follows:—

To the plaintiff or complainant, —

For a writ and declaration, petition or complaint, one dollar.

7 For an attorney's fee, if there is an appearance for the defendant,
8 two dollars and fifty cents; if not, one dollar and twenty-five
9 cents.

10 For a term fee in a police, district or municipal court, three dol-
11 lars, if there is an appearance for the defendant; and if not, one
12 dollar; before a trial justice, one dollar.

13 For travel, the fees allowed therefor by section twenty-four.

14 For attendance, thirty-three cents for each day's actual attend-
15 ance by him or his attorney; but not for more than three days'
16 attendance, if the defendant is defaulted without having appeared,
17 or for attendance after the day on which the action is finally dis-
18 posed of for the sitting, which day shall be entered on the docket.

19 *To the defendant, —*

20 For travel, the fees allowed therefor by section twenty-four.

21 For attendance, thirty-three cents for each day's attendance by
22 him or his attorney; but not for attendance after the day on which
23 the action is finally disposed of for the sitting, which day shall be
24 entered on the docket.

25 For a term fee, three dollars; but before trial justices, one dollar.

26 For an attorney's fee, two dollars and fifty cents.

1 SECTION 28. There shall be allowed as costs in an action by the
2 trustee process in a police, district or municipal court or before
3 a trial justice, in addition to the other disbursements allowed by
4 law, as follows: —

5 *To the plaintiff, —*

6 For a writ and declaration, one dollar.

7 For an attorney's fee, one dollar and fifty cents.

8 For a term fee, if there is an appearance, one dollar; and if not,
9 seventy-five cents.

10 For travel and attendance, the same fees as are allowed to a
11 plaintiff by the preceding section.

12 *To the defendant, —*

13 For an attorney's fee, one dollar and fifty cents.

14 For travel and attendance, the same fees as are allowed to a de-
15 fendant by the preceding section.

16 *To the trustee, —*

17 For an attorney's fee, fifty cents.

18 For an answer in writing, twenty-five cents.

19 For travel and attendance, the same fees as are allowed to a de-
20 fendant by the preceding section.

21 For an answer to interrogatories, such costs as the court may
22 allow.

23 *To an adverse claimant, —*

24 Such costs as the court may allow.

Costs, items of,
in actions by
trustee process
in police
courts, etc.
G. S. 156, § 27.
1877, 177, § 1.
P. S. 198, § 31.

1 SECTION 29. In a proceeding before a police, district or municipi-
2 pal court or before a trial justice under the bastardy laws, the
3 costs shall be the same as in civil cases.

— in bastardy
proceedings.
1876, 227, § 5.
P. S. 198, § 32.

1 SECTION 30. If a corporation is entitled to costs, travel shall be
2 computed from the place in which the corporation is situated, if it
3 is in its nature local; otherwise, from the place in which its business
4 is chiefly or commonly transacted.

Computation
of travel in
favor of a
corporation.
R. S. 121, § 35.

G. S. 156, § 28.

P. S. 198, § 33.

CHAPTER 204.

OF THE FEES OF CERTAIN OFFICERS.

SECTION	1. — Justices of the Peace.
SECTIONS	2-5. — Police, District and Municipal Courts and Trial Justices.
SECTIONS	6-9. — Clerks of the Courts.
SECTIONS	10-16. — Sheriffs, Deputy Sheriffs and Constables.
SECTIONS	17-24. — Jurors, Witnesses, Appraisers, Commissioners, etc.
SECTION	25. — Town Clerks.
SECTION	26. — Ministers, etc., for Marriages.
SECTIONS	27, 28. — Secretary of the Commonwealth.
SECTION	29. — Registers of Deeds.
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SECTION	31. — Notaries Public.
SECTION	32. — Commissioners in Other States.
SECTIONS	33-55. — General Provisions.

JUSTICES OF THE PEACE.

Fees of justices of the peace. 1795, 41, § 1. R. S. 122, § 1. G. S. 157, §§ 1, 2. P. S. 199, § 1.	SECTION 1. The fees of justices of the peace shall be as follows : —	1
	For a subpœna for one or more witnesses, ten cents.	2
	For taking a deposition, fifty cents ; for writing the deposition and caption, at the rate of twelve cents a page ; for notice to the adverse party, twenty cents. The justice shall certify his fees and the deponent's fees on the deposition.	3
1866, 193, § 2.	For administering an oath required by law, except on a trial or examination before him, to one or more persons at one time, twenty-five cents.	4
	For the acknowledgment of a deed by one or more grantors, if taken at one time, twenty-five cents.	5
	For granting a warrant of appraisal, twenty cents.	6
1860, 191, § 1. 1879, 254.	For issuing a warrant under the provisions of sections three and four of chapter one hundred and sixty-one, one dollar.	7
	For taking a deposition to perpetuate testimony, each justice shall be entitled to the fees prescribed, for all services which are personally rendered by him.	8
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POLICE, DISTRICT AND MUNICIPAL COURTS AND TRIAL JUSTICES.

Fees of police courts, etc. Civil cases. 1795, 41, § 1. R. S. 122, § 2. 1853, 369. 1855, 449, § 14. 1859, 241. G. S. 157, § 2. 1870, 330, § 2. 1877, 177, § 2; 240. 1879, 226, § 1. P. S. 199, § 2.	SECTION 2. The fees of police, district and municipal courts, shall be as follows : —	1
	<i>In civil actions, —</i>	2
	For a blank writ of original summons or attachment and summons, five cents.	3
	For the entry of an action, except a bastardy complaint, or for the filing of a petition, including filing of papers, entering up and recording judgment, one dollar.	4
	For each order of notice and rule of reference, fifty cents.	5
	For an alias or renewed execution, twenty-five cents.	6
1898, 204, § 3. 1899, 333, § 1.		7
		8
		9
		10

- 11 For approving an appeal bond, including principal and surety,
- 12 twenty cents.
- 13 *In bastardy cases, —*
- 14 For approving each bond given by a respondent, one dollar.

Bastardy cases.

- 1 SECTION 3. A special justice, when not holding court, shall be
- 2 paid by the county one dollar for each warrant issued by him.

Fees of special justices.
1879, 254.

P. S. 199, § 3.

- 1 SECTION 4. In bastardy cases, police, district or municipal courts
- 2 or their clerks shall make no charge for copies for transmission to
- 3 the superior court of the complaint, warrant, record or taxed bill
- 4 of costs, or for the transmission of the bond of the respondent.

Copies in bastardy cases without charge.
1899, 333, § 2.

- 1 SECTION 5. The fees of trial justices shall be as follows: —

Fees of trial justices. Civil cases.

- 2 *In civil actions, —*

- 3 For a blank writ of original summons or attachment and sum-
- 4 mons, seventeen cents.

1795, 41, § 1.
R. S. 122, § 1.
1858, 138.
G. S. 157, § 2.
P. S. 199, § 2.
1899, 333, § 1.

- 5 For the entry of an action, except a bastardy complaint, or for
- 6 the filing of a petition, including filing of papers, examining, allow-
- 7 ing and taxing costs for the plaintiff, entering up and recording
- 8 judgment, one dollar.

- 9 For the trial of an issue, one dollar.

- 10 For each order of notice, fifty cents.

- 11 For taxation of costs for the defendant, except in the trustee proc-
- 12 ess, twenty-five cents.

- 13 For taxation of costs for the defendant, trustee or claimant in the
- 14 trustee process, ten cents.

- 15 For a writ of execution, twenty-five cents.

- 16 For taking a recognizance to prosecute an appeal, including prin-
- 17 cipal and surety, twenty cents.

- 18 *In criminal cases, —*

— in criminal cases.
1876, 227, § 4.
1890, 353, § 1.
1891, 325, § 2.
1892, 200, § 3.

- 19 For receiving complaint, administering the oath, issuing a war-
- 20 rant, entering the complaint, rendering and recording judgment,
- 21 examining, allowing and taxing costs, filing papers, issuing a sub-
- 22 poena for one or more witnesses, for a trial or for a hearing on any
- 23 plea whatever, for discharging without complaint a person arrested
- 24 for drunkenness, for taking a recognizance of principal, sureties
- 25 and witnesses, for a mittimus and for notice in cases of juvenile
- 26 offenders, three dollars, which shall be paid by the county.

- 27 For copies upon appeal or for the grand jury, two dollars.

- 28 For necessary travel, the actual expenses incurred, which shall be
- 29 paid by the county.

- 30 *In bastardy cases, —*

— in bastardy cases.

- 31 For approving each bond given by the respondent, one dollar.

CLERKS OF THE COURTS.

- 1 SECTION 6. The fees of clerks of the courts shall be as fol-
- 2 lows: —

- 3 For a blank writ of attachment and summons or an original sum-
- 4 mons, five cents.

- 5 For a subpoena for one or more witnesses, ten cents.

- 6 For a venire facias for jurors, six cents.

Fees of clerks of the courts.
1795, 41, § 1.
R. S. 122, § 2.
1853, 369.
1856, 246.
G. S. 157, § 3.
P. S. 199, § 4.
1888, 257, §§ 3, 5.
1890, 209, § 2;
256; 360.

1891, 87.
1893, 91; 333, § 1.
1900, 372, § 3.
161 Mass. 594.
168 Mass. 304.

For a writ of review or other writ in civil proceedings, not before mentioned, five cents. 7 8

For the entry of an action or suit, except a bastardy complaint, or of a libel for divorce, or of a petition in the supreme judicial court or the superior court or for filing a petition to the county commissioners, for taxing costs, for issuing a subpoena, injunction or execution, except an alias or renewed execution, and for issuing any order of notice or other mesne, interlocutory or final order, rule, decree or process authorized by law, three dollars, which shall be paid by the plaintiff, libellant, petitioner or appellant as the case may be. 9 10 11 12 13 14 15 16 17

For the entry, record and transmission of papers of each question or cause in the supreme judicial court for the commonwealth, three dollars. 18 19 20

For a rule to an auditor, master, referee or assessor, one dollar. 21

For an alias or renewed execution, twenty-five cents. 22

For a certificate of the proof of a deed in court, twenty cents. 23

For the warrant for a county tax, twenty cents. 24

In civil actions in which the commonwealth or a county is the plaintiff, no entry fee shall be paid, but if the plaintiff prevails, it shall be taxed against the defendant. 25 26 27

Copies.
1879, 300, § 2.
P. S. 139, § 5.
[1 Op. A. G.
522.]

SECTION 7. When clerks cause copies which they are required by law to furnish to be printed, they shall make no charge for such printed copies in excess of the amount actually paid for the printing thereof. They may require the estimated cost of said printing to be paid in advance, and they shall supervise the printing and correct the proofs without charge. All written copies, including such as are prepared for printing, shall be charged for at the rate of twenty cents a page. 1 2 3 4 5 6 7 8

Additional
fees for record
of judgment.
1888, 257, § 7.

SECTION 8. When a judgment or decree is entered up, and upon inspection it appears that the record thereof or the record of the proceedings will be of unusual length, the court may order the prevailing party to pay such amount, in addition to the entry fee, as may be just and equitable. 1 2 3 4 5

Fees collected
in advance.

SECTION 9. Clerks of the courts shall collect all fees in advance. 1888, 257, § 8. 168 Mass. 304. 1

SHERIFFS, DEPUTY SHERIFFS, AND CONSTABLES.

Fees of
sheriffs, etc.

SECTION 10. The fees of sheriffs, deputy sheriffs and constables shall be as follows:— 1 2

For the service of an original summons or scire facias, either by reading it or by leaving a copy thereof, fifty cents for each defendant upon whom service is made. 3 4 5

Service of
writs.
1795, 41, § 1.
R. S. 122, § 5.
G. S. 157, §§ 4, 7.
1860, 191, § 1.
1865, 101.
1877, 177, § 1.
1878, 272, § 1.
P. S. 139, § 6.
102 Mass. 514.
122 Mass. 541.
139 Mass. 296.
155 Mass. 259.

For the service of a capias, of an attachment with summons or of a trustee process, fifty cents for each defendant or trustee upon whom service is made; but the fee for the service of a trustee process returnable before a police, district or municipal court or trial justice, upon each trustee after the first shall be twenty-five cents, and the fee for each copy after the first shall be ten cents. If the officer by the direction of the plaintiff or his attorney makes a special service of a writ, either by attaching personal property or 6 7 8 9 10 11 12 13

14 arresting the body, he shall be entitled to one dollar for each de-
 15 fendant upon whom the writ is so served.

16 For the custody of personal property attached or taken on execu-
 17 tion, not more than two dollars for each day of twenty-four hours
 18 for the keeper while he is in charge, and not more than fifty cents
 19 a day for the officer for a period not longer than ten days. But
 20 the officer may be allowed a greater compensation for himself or for
 21 his keeper, or compensation for a longer period, by the written
 22 consent of the plaintiff and the defendant who owns the property,
 23 or by order of the court upon a hearing.

24 For taking bail and furnishing and writing the bail bond, one Fees for taking
bail, etc.
 25 dollar, which shall be paid by the defendant, and taxed in his
 26 bill of costs, if he prevails.

27 For serving an execution in a personal action, and collecting — for serving
executions, etc.
 28 damages or costs on an execution, warrant of distress or other like
 29 process, for an amount not exceeding one hundred dollars, four
 30 cents for every dollar; all above one hundred dollars, and not ex-
 31 ceeding five hundred dollars, two cents for every dollar; and all
 32 above five hundred dollars, one cent for every dollar; but such
 33 percentage shall be allowed only upon the amount actually col-
 34 lected, and if payment is made by the debtor on demand, or with-
 35 out levy of the execution upon his property or body, the fees shall
 36 be one-half only of the above rates.

37 For serving a writ of seisin or possession in a real action, one
 38 dollar and ten cents. If served on more than one parcel of land,
 39 seventy-five cents for each parcel after the first.

40 For serving an execution upon a judgment for partition, or for
 41 assignment of dower or curtesy, one dollar a day.

42 For serving a warrant of capias in a criminal proceeding, fifty — for serving
criminal
process.
1862, 216, § 1.
1881, 127, § 2.
 43 cents, and of a summons upon the defendant, ten cents, for each
 44 person upon whom the same is served.

45 For serving a writ of habeas corpus, mittimus, state prison war-
 46 rant, venire or notice to jurors for attendance upon any court,
 47 civil or criminal, and for service of process issued during the pen-
 48 dency of a prosecution, except subpoenas, thirty cents for each
 49 person upon whom the service is made.

50 For summoning witnesses, ten cents for each witness. — for serving
subpoenas.
1862, 216, § 6.

51 For dispersing treasurer's warrants and proclamations of all kinds,
 52 eight cents each, without allowance for travel.

53 For a copy of a mittimus, warrant or other precept required by — for copies.
1862, 216, § 8.
1865, 259, § 1.
 54 law in criminal cases, twenty-five cents.

55 For travel in the service of original writs, executions, warrants,
 56 subpoenas and like processes, four cents a mile each way, to be com-
 57 puted from the place of service to the court or place of return; and
 58 if the same precept is served upon more than one person, the travel
 59 shall be computed from the most remote place of service, with such
 60 further travel as was necessary in serving it; if the distance from
 61 the place of service to the place of return exceeds twenty and does
 62 not exceed fifty miles, four cents a mile one way only shall be
 63 allowed for all travel exceeding twenty miles, and, if it exceeds
 64 fifty miles, only one cent a mile one way shall be allowed for all
 65 travel exceeding that distance. — for travel.
1862, 216, §§ 1,
6, 7.
1865, 101.
1882, 215.

66 For travel in summoning witnesses in criminal cases ten cents a
 67 mile each way for a distance of not more than twenty miles, and

for any excess over twenty miles, five cents a mile each way, and no more. The distance shall be computed from the most remote place of service to the place of return, but upon a subpoena, the court shall reduce the fee for travel to a reasonable amount for the service performed if the travel charged has not been actually performed by the officer who made the service.

1862, 216, § 1.

For travel in the service of venirees and notices to jurors, five cents a mile from the place of service to the place of return.

Processes re-
turned by mail.
1878, 272, § 4.
P. S. 199, § 7.

SECTION 11. If the person who delivers or forwards a process to an officer for service requests him to return it by mail or express, compensation shall not be allowed for more than twenty miles' travel in the service, unless the officer actually and necessarily travels more than that distance in serving the same, exclusive of travel from the place of service to the place of return; and an officer in such case, who properly directs such process to the place of return and delivers it prepaid at the post office, or to an express company, shall not be liable for damages if it fails to reach its destination.

Use of horse
and carriage.
1864, 274, § 1.
P. S. 199, § 8.
122 Mass. 543.

SECTION 12. If it is necessary for an officer in the service of civil process to use a horse and carriage for a distance exceeding two miles one way, he shall be allowed therefor twelve cents a mile one way for a distance not exceeding twenty miles.

Allowance of
expense in
criminal cases.
1860, 191, § 3.
1862, 216, § 1.
P. S. 199, § 9.
1885, 254.

SECTION 13. In the service of precepts in criminal cases, the officer shall be allowed the actual, reasonable and necessary expenses incurred in going or returning with the prisoner, and if he necessarily uses his own horse and carriage, he shall be allowed therefor fifteen cents a mile for the distance travelled one way, and if he uses the horse and carriage of another person, he shall be allowed the amount actually expended by him therefor; but no allowance for the use of a horse and carriage shall be made unless the officer certifies that it was necessary for him to use a horse and carriage and that he actually used them for the distance, and paid therefor the amount, stated in his certificate. If, in the service of a mittimus, the journey from the town where the prisoner is held to the town where he is to be committed can be made by railroad, no allowance shall be made for the use of a horse and carriage.

Attendance
upon inferior
courts.
R. S. 122, § 5.
1843, 75, § 2.
1856, 185.
G. S. 157, § 4.
1876, 227, § 4.
1881, 127, § 2.
P. S. 199, § 10.

SECTION 14. The fee for attending before a police, district or municipal court or trial justice shall be one dollar a day, upon one warrant only, if there are two or more against the same defendant at the same time; but if a trial is continued upon the arraignment without examination, no fee upon the day of arraignment shall be allowed. If the defendant in a criminal case is brought in by a summons, the fee for attendance shall be the same as that taxed upon a warrant.

—upon county
commissioners.
1735, 41, § 1.
R. S. 122, § 5.
1843, 75, § 2.
1856, 185.
G. S. 157, § 4.

SECTION 15. A deputy sheriff shall be allowed three dollars a day for attendance upon a meeting of the county commissioners by their order, and five cents a mile for travel out and home once a week during the attendance, to be paid by the county.

1 SECTION 16. Sheriffs and other officers shall be paid by the
 2 commonwealth, for serving precepts for the election of representa-
 3 tives in congress, fifty cents each, and for the service of subpoenas
 4 issued by order of the general court or either branch thereof, the
 5 same fees as are allowed for the service of subpoenas issued by a
 6 court.

Fees for serv-
 ing precepts
 for elections.
 Subpoenas.
 R. S. 6, § 10.
 1849, 208.
 1859, 257, § 4.
 G. S. 157, § 4.
 P. S. 199, § 12.
 1899, 218.

JURORS, WITNESSES, APPRAISERS, COMMISSIONERS, ETC.

1 SECTION 17. A grand juror or traverse juror in any court or
 2 before a sheriff shall receive three dollars a day for attendance, and
 3 eight cents a mile for travel out and home. A juror who serves
 4 in court shall also be allowed the amount of the expense necessarily
 5 incurred by him for transportation by railroad or stage from his
 6 home to the court and return, in excess of the said allowance for
 7 travel.

1879, 182.

P. S. 199, § 13.

1899, 383.

— of jurors.
 1795, 41, § 1.
 1805, 63, § 1.
 1807, 140, § 16.
 R. S. 122, § 10.
 1848, 271.
 1855, 120, § 1.
 G. S. 157, § 8.
 1866, 121.
 1869, 73.
 1873, 36.

1 SECTION 18. Officers who serve subpoenas or other processes in
 2 connection with inquests held by police, district or municipal courts,
 3 shall be paid their fees and expenses by the county as in criminal
 4 cases, in the same manner as the fees of witnesses are paid in crim-
 5 inal cases in said courts.

— for service
 of process
 relative to
 inquests.
 1898, 204, § 1.

1 SECTION 19. In cases against juvenile offenders, an officer who
 2 attends as a witness at a place other than his residence may be
 3 allowed by the court or justice his increased necessary expenses, not
 4 exceeding the witness fee before such court or justice, and the
 5 reasonable necessary expense of serving a mittimus.

— in cases
 against
 juvenile
 offenders.
 1889, 469.

1 SECTION 20. If an officer, whose compensation for services in
 2 criminal proceedings is derived from taxable fees, makes an arrest for
 3 drunkenness and the person arrested is discharged without being
 4 taken into court or before a trial justice, he shall be entitled to the
 5 same fees as if a complaint had been made against the person ar-
 6 rested. If the arrest is made without a warrant, the officer shall
 7 make a statement of his fees in writing, under oath, in the nature
 8 of a return upon a precept, and shall send it to the court or trial
 9 justice having jurisdiction of the offence. Special police officers
 10 who make arrests for drunkenness in cities and towns in which the
 11 police officers or constables receive salaries shall be entitled to no
 12 fees under the provisions of this section.

— for arrests
 for drunken-
 ness.
 1892, 200, §§ 1, 2.
 [149] A. G.
 597.]

1 SECTION 21. The fees for attending as a witness in a civil case
 2 in the supreme judicial court, superior court, probate court or court
 3 of insolvency or to persons, except the debtor, who are examined
 4 under the provisions of section eighty-two of chapter one hundred
 5 and sixty-three, unless fraudulent conduct is charged and proved
 6 against them, shall be one dollar and fifty cents a day; for attend-
 7 ing before either of said courts in a criminal case, before county
 8 commissioners or a sheriff's jury, or before the general court, one
 9 dollar and twenty-five cents a day; for attending before a trial
 10 justice, or police, district or municipal court, referee, arbitrator, or
 11 on any other occasion for which no express provision is made, fifty
 12 cents a day; and in all cases, five cents a mile for travel out and

— of witnesses.
 1795, 41, § 1.
 1805, 63, § 2.
 1817, 88.
 R. S. 122, § 10.
 1848, 123.
 1849, 208.
 1855, 120, § 2.
 G. S. 157, § 8.
 1860, 191, § 1.
 1868, 87.
 1870, 151.
 P. S. 199, § 14.
 1890, 277.
 145 Mass. 203.
 176 Mass. 56.

home. Each witness shall certify in writing the amount of his travel and attendance. 13 14

Fees of witnesses held in jail.
1894, 406, § 2.

SECTION 22. A witness who is detained in jail under the provisions of section fifty of chapter two hundred and seventeen shall be allowed a witness fee of not less than one dollar and fifty cents for each day of his detention, unless the court otherwise orders. 1 2 3 4

— of appraisers, etc.
1795, 41, § 1.
R. S. 122, § 10.
G. S. 157, § 8.

SECTION 23. The court shall determine the compensation of private persons who perform service required by law, or in the execution of legal process, if no other provision therefor is made. 1 2 3
P. S. 199, § 15. 1886, 135.

Interpreters.
1893, 385.

SECTION 24. Police, district and municipal courts and trial justices may allow reasonable compensation to interpreters and to witnesses from without the commonwealth in criminal proceedings before them, which shall be paid by the county in the same manner as witness fees. 1 2 3 4 5

TOWN CLERKS.

Fees of town clerks.
1795, 41, § 1.
R. S. 122, §§ 11, 12.
1849, 202, § 2.
1850, 121, § 4.
G. S. 157, § 9.
P. S. 199, § 16.

SECTION 25. The fees of town clerks shall be as follows : — 1
For entering notice of an intention of marriage and issuing the certificate thereof, and for entering the certificate of marriage which is filed by persons married out of the commonwealth, fifty cents, which shall be paid by the parties. 2 3 4 5
For a certificate of a birth or death, ten cents. 6

MINISTERS, ETC., FOR MARRIAGES.

Fee for marriages.
1795, 41, § 1.
R. S. 122, § 11.

SECTION 26. The fee for lawfully solemnizing and certifying a marriage shall be one dollar and twenty-five cents. 1 2
G. S. 157, § 10. P. S. 199, § 17.

SECRETARY OF THE COMMONWEALTH.

Fees of secretary of the commonwealth.
1795, 41, § 1.
R. S. 122, § 13.
G. S. 157, § 11.

SECTION 27. The fees of the secretary of the commonwealth for copies furnished to any private person shall be at the same rate by the page as is allowed to registers of deeds, and twenty-five cents additional shall be allowed for the secretary's certificate. 1 2 3 4
1863, 231, § 1. 1865, 259, § 1. P. S. 199, § 18.

— for examination of the records, etc.
1863, 231, § 3.
P. S. 199, § 19.

SECTION 28. Every person upon whose application an examination of records or papers is made by direction of the secretary of the commonwealth shall pay to the secretary therefor the actual expense of such examination, and of copying the manuscript or record required : but any person whom the secretary considers to be entitled to exemption from said fees shall receive such service and copies for such reduced fees, or without fee, as the secretary decides that the case requires. 1 2 3 4 5 6 7 8

REGISTERS OF DEEDS.

Fees of registers of deeds.
1795, 41, § 1.
R. S. 122, § 15.
1853, 311, § 1.

SECTION 29. The fees of registers of deeds shall be as follows : — 1
For entering and recording a deed or other paper, certifying the same on the original, and indexing it, and for all other duties per- 2 3

- 4 taining thereto, twenty-five cents. If it contains more than one
 5 page, at the rate of twenty cents for each page after the first.
 6 The fees shall be paid when the instrument is left for record.
 7 For all copies, at the rate of twenty cents a page.
 8 For entering in the margin a discharge of a mortgage, twenty-
 9 five cents.
 10 For entering a discharge of an attachment or of a lien on build-
 11 ings and land, if such discharge is certified by them, twenty-five
 12 cents.
 13 For entering a partial release of an attachment, twenty-five cents.

G. S. 157, § 12.
 P. S. 199, § 20.
 1896, 443, § 7.

REGISTERS OF PROBATE AND INSOLVENCY.

- 1 SECTION 30. The fees of registers of probate and insolvency
 2 shall be as follows :—
 3 For copies of records or other papers in their charge, the fees
 4 which are provided by this chapter for similar copies unless the fees
 5 are otherwise fixed by law.

Fees of regis-
 ters of probate
 and insol-
 vency.
 1893, 469, § 2.

NOTARIES PUBLIC.

- 1 SECTION 31. The fees of notaries public shall be as follows :—
 2 For the protest of a bill of exchange, order, draft or check for
 3 non-acceptance or non-payment, or of a promissory note for non-
 4 payment, if the amount thereof is five hundred dollars or more,
 5 one dollar; if it is less than five hundred dollars, fifty cents; for
 6 recording the same, fifty cents; for noting the non-acceptance or
 7 non-payment of a bill of exchange, order, draft or check or the
 8 non-payment of a promissory note, seventy-five cents; and for
 9 each notice of the non-acceptance or non-payment of a bill, order,
 10 draft, check or note, given to a party liable for the payment thereof,
 11 twenty-five cents; but the whole cost of protest, including neces-
 12 sary notices and the record, if the bill, order, draft, check or note
 13 is of the amount of five hundred dollars or more, shall not exceed
 14 two dollars, and if it is less than five hundred dollars, shall not
 15 exceed one dollar and fifty cents; and the whole cost of noting,
 16 including recording and notices, shall in no case exceed one dollar
 17 and twenty-five cents.

— of notaries
 public.
 R. S. 122, § 16.
 1833, 93.
 G. S. 157, § 13.
 P. S. 199, § 21.

COMMISSIONERS IN OTHER STATES.

- 1 SECTION 32. The fees of commissioners appointed under the pro-
 2 visions of section nine of chapter seventeen shall be as follows :—
 3 For administering oaths and certifying the same under their
 4 official seals, one dollar for each; for taking acknowledgments of
 5 deeds and other instruments and certifying the same under their
 6 official seals, one dollar for each; for each written page contained in
 7 any deposition or affidavit taken by them, fifty cents; for admin-
 8 istering the oath or affirmation to each deponent, one dollar; for
 9 authenticating, sealing up and directing each deposition, one dollar;
 10 for services not hereinbefore specified, the same fees as are allowed
 11 to justices of the peace in this commonwealth for like services; but
 12 the court to which a deposition is returnable shall order further
 13 allowance therefor if it appears proper to do so.

— of commis-
 sioners in
 other states,
 etc.
 1862, 76.
 P. S. 199, § 22.
 118 Mass. 423.

GENERAL PROVISIONS.

Fees in cases not specified. R. S. 122, § 21. 1855, 311, § 3. G. S. 157, § 14.	SECTION 33. The fees of public officers for any official duty or service shall, except as otherwise provided, be at the rate prescribed in this chapter for like services.	1 2 3
	P. S. 199, § 23. 1893, 469, § 2.	
— for copies. 1865, 259, § 1. P. S. 199, § 24. 1893, 469, § 2.	SECTION 34. Public officers who are required by law to furnish copies of records or other papers shall receive fees for such copies at the same rate as is allowed to registers of deeds, unless otherwise provided.	1 2 3 4
"Page" defined. 1795, 41, § 1.	SECTION 35. A page, when used as the measure of computation, shall mean two hundred and twenty-four words.	1 2
	R. S. 122, § 22. G. S. 157, § 15. P. S. 199, § 25. 1893, 469, § 2.	
List of fees to be posted in public offices. 1795, 41, § 4. R. S. 122, § 17. G. S. 157, § 15. P. S. 199, § 26.	SECTION 36. Each of the officers before mentioned, who keeps a public office, shall always keep posted in a conspicuous and convenient place in his office a printed or written list of the fees prescribed in this chapter, so far as they relate to him.	1 2 3 4
	1893, 469, § 2.	
Officer to specify items if required. 1795, 41, § 5. R. S. 122, § 18. G. S. 157, § 17. P. S. 199, § 27. 1893, 469, § 2.	SECTION 37. An officer receiving fees for any official duty or service, who, upon request of the person paying them, refuses or neglects to make out in writing a particular account of such fees, specifying for what they respectively accrued, shall forfeit to such person three times the amount so paid.	1 2 3 4 5
Indorsement of fees on writ. Certificate of use of horse and carriage. 1795, 41, § 1. R. S. 122, § 9. G. S. 157, § 18. 1864, 274, §§ 2, 3. P. S. 199, §§ 28, 29. 119 Mass. 426.	SECTION 38. No fees for the service of any writ or precept of which the officer is required to make a return shall be allowed, unless indorsed on the writ or precept: and no allowance for the use of horse and carriage in the service of a civil process shall be made, unless the officer certifies that it was necessary for him to use a horse and carriage, and that he actually used such conveyance the distance set forth in his certificate. An officer who makes a false certificate under the provisions of this section shall forfeit thirty dollars for each offence, to the use of the commonwealth; but a suit therefor shall be commenced within two years after the offence was committed.	1 2 3 4 5 6 7 8 9 10 11
Return of expense in criminal cases under oath. 1862, 216, §§ 4, 5, 12. P. S. 199, §§ 30, 31. 1890, 440, § 7.	SECTION 39. No fees shall be allowed upon the return of an officer upon a precept in a criminal case, in which expenses are charged, unless every item of expense incurred and the name of the person to whom each amount was paid is set forth under oath in the return; and no item of expense which may be considered unreasonable shall be allowed by the court or trial justice without satisfactory proof that the expense was necessarily incurred and the amount reasonable. But the superior court, with the approval in writing of the district attorney, or a police, district or municipal court or a trial justice, may, upon the petition of an officer named in sections forty-two and forty-three, allow extra compensation for any meritorious service for which the fees allowed by law are manifestly inadequate. No allowance shall be made for aid in the service of a mittimus, unless it is first authorized in writing by the court which issues it. Justices, clerks and assistant clerks of	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15

16 courts shall administer the oath to officers upon their returns, at
 17 their request: and no fee shall be allowed to an officer for such
 18 oath, and no justice of the peace shall be entitled to a fee for
 19 administering such oath.

1 SECTION 40. If more than one criminal process is served upon
 2 the same defendant at one time, or on the same day, or if two or
 3 more prisoners are conveyed at one time by the same officer, by
 4 virtue of a mittimus, habeas corpus or state prison warrant, either
 5 on one process or on several processes, one travelling fee and one
 6 service only shall be allowed in conveying such additional prisoner
 7 or prisoners, in addition to the actual reasonable expense necessarily
 8 incurred.

Single fees
 only for ser-
 vice, etc., of
 processes at
 same time.
 1862, 216, § 2.
 P. S. 199, § 32.

1 SECTION 41. No fee shall be allowed to a trial justice for issu-
 2 ing more than one mittimus, nor to an officer for the service of
 3 more than one mittimus, in cases in which two or more persons are
 4 jointly convicted and sentenced to the same place of imprisonment;
 5 and if the superior court is of opinion that a trial justice has im-
 6 providently issued two or more warrants against the same defend-
 7 ants for similar offences, no fees shall be allowed to the justice upon
 8 any of said warrants.

No fee for
 issuing or
 serving more
 than one mitti-
 mus, etc.
 1862, 216, § 3.
 P. S. 199, § 33.

1 SECTION 42. No officer in attendance on any court, sheriff,
 2 deputy sheriff, jailer, constable, city marshal or other police officer
 3 who receives a salary or an allowance by the day or hour from the
 4 commonwealth or from a county, city or town shall, except as
 5 otherwise hereinafter provided, be paid any fee or extra compensa-
 6 tion for official services performed by him in any criminal case: or
 7 for aid rendered to another officer: or for testifying as a witness
 8 in a criminal case during the time for which he receives such salary
 9 or allowance; or for services or as a witness at an autopsy or inquest;
 10 or in proceedings for commitment of insane persons; but his ex-
 11 penses, necessarily and actually incurred, and actually disbursed by
 12 him in a criminal case tried in the superior court, shall be paid by
 13 the county in which the trial is held, and in a criminal case tried in
 14 a police, district or municipal court or before a trial justice, by the
 15 city or town in which the crime was committed. Whoever receives
 16 extra compensation or a witness fee in violation of the provisions
 17 of this section shall be punished by a fine of not more than one
 18 hundred dollars.

Salaried
 officers not to
 be paid fees,
 except, etc.
 1862, 216, §§ 10,
 15.
 1876, 215; 227,
 § 4.
 P. S. 199, §§ 34,
 35.
 1889, 469.
 1890, 440, §§ 1,
 9, 12.
 1891, 325, § 1.
 [1 Op. A. G.
 594, 603.]

1 SECTION 43. The fees and expenses of officers, other than those
 2 named in the preceding section, in a criminal case tried in the
 3 superior court, shall be paid by the county in which the trial is
 4 held, and in a criminal case tried in a police, district or municipal
 5 court or before a trial justice, by the city or town in which the
 6 crime was committed.

Fees and ex-
 penses of
 officers in
 criminal cases.
 1890, 440, § 2.
 1891, 325, § 1.

1 SECTION 44. Any officer named in section forty-two who
 2 attends as a witness at a place other than his residence, shall,
 3 instead of his expenses, be allowed by the day the witness fee in
 4 the court or before the trial justice where he testifies. A police

—of certain
 officers.
 1890, 440, § 6.

officer on duty at night who attends the superior court as a witness 5
for the commonwealth shall be paid the same fees as any other wit- 6
ness. A police officer who is a witness for the commonwealth, and 7
who under the direction of the district attorney aids in securing the 8
attendance of other witnesses, may receive, instead of his expenses, 9
the witness fee for one day's attendance. Police officers shall serve 10
subpoenas upon witnesses when requested by the district attorney, 11
and their returns of service shall have the same force and effect as 12
the return of a deputy sheriff or constable. 13

Compensation
of officers for
attending
superior court
in criminal
cases.
1890, 440, § 7.

SECTION 45. A deputy sheriff or other officer attending the 1
superior court for criminal business, who serves any subpoena or 2
capias between the daily sessions of said court, may receive such 3
extra compensation as the district attorney may allow. The officers 4
shall make return, under oath, of the time actually occupied and 5
of all expenses actually incurred and paid in performing such extra 6
service. 7

Fees of rail-
road police.
1890, 440, § 9.

SECTION 46. Railroad police shall not be entitled to any fees 1
for attendance upon a trial as witnesses for the commonwealth, but 2
they may be allowed their necessary expenses therefor. 3

— of district
police.
1868, 338.
1870, 326, § 1.
1879, 305.
P. S. 199, § 36.
[1 Op. A. G.
404.]

SECTION 47. A district police officer or an officer of the com- 1
monwealth whose salary is fixed by law, shall not be entitled to a 2
witness fee before any court or trial justice of this commonwealth 3
in a cause in which the commonwealth is a party. An officer whose 4
compensation is derived solely from fees shall not be entitled to re- 5
ceive more than one fee as a witness for a day's attendance on court 6
under one or more summonses in behalf of the commonwealth, and 7
the said fee shall be apportioned by the clerk among the cases in 8
which he is so summoned. 9

Officers may
be allowed
expenses.
1870, 326, § 2.
P. S. 199, § 37.

SECTION 48. If it appears on oath that a salaried officer of the 1
commonwealth has attended court as a witness in behalf of the 2
commonwealth, at a place other than his residence, and that his 3
necessary expenses have been increased by such attendance, the 4
court or trial justice may allow such increased necessary expenses, 5
not exceeding one dollar and fifty cents a day in all, for such actual 6
and necessary attendance. 7

Penalty.
1870, 326, § 3.
P. S. 199, § 38.
1890, 440, § 12.

SECTION 49. Whoever receives a witness fee or allowance for 1
increased necessary expenses in violation of the provisions of the 2
three preceding sections shall be punished by a fine of not more 3
than one hundred dollars. Every clerk of a court and trial justice 4
shall report forthwith to the district attorney for his county every 5
violation of said sections which comes to his knowledge, and said 6
district attorneys shall institute prosecutions therefor. 7

Witnesses'
fees appor-
tioned in
certain cases.
1855, 180, § 2.
G. S. 157, § 20.
1860, 191, § 6.
P. S. 199, § 39.

SECTION 50. If witnesses are in attendance in two or more crim- 1
inal cases pending at the same time before the same court, they shall 2
not be allowed full travel and attendance in each case, but the 3
justice or clerk of the court or trial justice may reduce and appor- 4
tion the same, allowing at least one travel and attendance. 5

1 SECTION 51. If, on the trial of a criminal case, it appears that a
 2 witness has induced the defendant to commit the crime with which
 3 he is charged with intent to appear as a witness against him, the
 4 court or magistrate may in his discretion refuse to allow him his
 5 fees.

Witnesses' fees
to be refused
in certain
cases.
1854, 389.
G. S. 157, § 21.
P. S. 199, § 40.

1 SECTION 52. A sheriff, deputy sheriff or other officer who takes
 2 the certificates of witnesses in criminal cases shall not purchase or
 3 discount or have any interest in orders drawn or demands upon the
 4 treasury by such witnesses.

Officers not to
purchase
orders, etc.
1855, 180, § 3.
G. S. 157, § 22.
P. S. 199, § 41.

1 SECTION 53. Whoever, with intent to defraud, signs or pro-
 2 cures to be signed a certificate of attendance or travel as a witness
 3 before a court, trial justice or reference founded upon a rule of
 4 court, in any case in which the witness did not so attend, or for a
 5 greater number of days than he actually attended, or for a greater
 6 number of miles than he actually travelled, upon which certificate
 7 the attendance or travel so claimed is allowed as a part of the
 8 expenses of prosecution, shall forfeit thirty dollars for each offence,
 9 to be recovered on complaint or indictment to the use of the county,
 10 or by action of tort to the use of any person against whom such
 11 excessive costs were taxed, with four times the whole amount
 12 taxed for attendance or travel on such false certificate, and double
 13 costs in the action of tort. Such complaint, indictment or action
 14 shall be commenced within two years after the offence was com-
 15 mitted.

Penalty for
false certifi-
cates of wit-
nesses, etc.
1854, 380.
G. S. 157, § 23.
P. S. 199, § 42.

1 SECTION 54. If the administration of justice or the progress of
 2 business in criminal proceedings is delayed, obstructed or prevented
 3 by the negligence of a magistrate in certifying and returning recog-
 4 nizances, records or other official papers which it is his duty to
 5 transmit to a higher court, or in omitting the formalities required
 6 by law, the district attorney, with the approval of the court, may
 7 refuse to allow the fees, either in whole or in part, to which such
 8 magistrate would otherwise be entitled.

Refusal of
fees to delin-
quent officer.
1855, 180, § 1.
G. S. 157, § 19.
P. S. 199, § 43.

1 SECTION 55. If the court finds that a complaint in a criminal
 2 case is unfounded, frivolous or malicious, it may refuse to allow
 3 any fees to the complainant.

— to complain-
ant.
1890, 440, § 13.

PART IV.

OF CRIMES, PUNISHMENTS, PROCEEDINGS IN CRIMINAL CASES, AND PRISONS.

TITLE I.

OF CRIMES AND PUNISHMENTS.

CHAPTER 205. — Of the Rights of Persons accused of Crime.

CHAPTER 206. — Of Crimes against the Sovereignty of the Commonwealth.

CHAPTER 207. — Of Crimes against the Person.

CHAPTER 208. — Of Crimes against Property.

CHAPTER 209. — Of Forgery and Crimes against the Currency.

CHAPTER 210. — Of Crimes against Public Justice.

CHAPTER 211. — Of Crimes against the Public Peace.

CHAPTER 212. — Of Crimes against Chastity, Morality, Decency and Good Order.

CHAPTER 213. — Of Crimes against the Public Health.

CHAPTER 214. — Of Crimes against Public Policy.

CHAPTER 215. — Of Felonies, Accessories and Attempts to commit Crimes.

CHAPTER 205.

OF THE RIGHTS OF PERSONS ACCUSED OF CRIME.

Person arrested to be informed of charge.
1852, 224, § 1.
G. S. 158, § 1.
P. S. 200, § 1.

SECTION 1. Whoever is arrested by virtue of process, or whoever is taken into custody by an officer, has a right to know from the officer who arrests or claims to detain him the true ground on which the arrest is made; and an officer who refuses to answer a question relative to the reason for such arrest, or answers such question untruly, or assigns to the person arrested an untrue reason for the arrest, or neglects upon request to exhibit to the person arrested, or to any other person acting in his behalf, the precept by virtue of which such arrest has been made shall be punished by a fine of not more than one thousand dollars or by imprisonment for not more than one year.

Penalty for arrest on false pretence.
1852, 224, § 2.
G. S. 158, § 2.
P. S. 200, § 2.

SECTION 2. An officer who arrests or takes into or detains in custody a person, pretending to have a process if he has none, or pretending to have a different process from that which he has, shall be punished by a fine of not more than one thousand dollars or by imprisonment for not more than one year.

- 1 SECTION 3. No person shall be held to answer in any court for
2 an alleged crime, except upon an indictment by a grand jury, upon
3 a complaint before a police, district or municipal court or trial jus-
4 tice or upon proceedings before a court-martial. P. S. 200, § 3. Prosecution of crimes. Decl. of Rights, art. 12. R. S. 123, § 1. G. S. 158, § 3.
- 1 SECTION 4. A person who is accused of crime shall at his trial be
2 allowed to be heard by counsel, to defend himself, to produce wit-
3 nesses and proofs in his favor and to meet the witnesses produced
4 against him face to face. G. S. 158, § 4. P. S. 200, § 4. Counsel for accused. Decl. of Rights, art. 12. R. S. 123, § 2.
- 1 SECTION 5. A person who is indicted for a crime shall not be
2 convicted thereof except by confessing his guilt in open court, by
3 admitting the truth of the charge against him by his plea or demurrer
4 or by the verdict of a jury which has been accepted and recorded by
5 the court. Persons indicted, how convicted. R. S. 123, § 3. G. S. 158, § 5. P. S. 200, § 5. 12 Allen, 167.
- 1 SECTION 6. A person shall not be held to answer on a second
2 indictment or complaint for a crime of which he has been acquitted
3 upon the facts and merits; but he may plead such acquittal in bar
4 of any subsequent prosecution for the same crime, notwithstanding
5 any defect in the form or substance of the indictment or complaint
6 on which he was acquitted. 113 Mass. 200. 160 Mass. 276. Plea of former acquittal, when a bar. R. S. 123, § 4. G. S. 158, § 6. P. S. 200, § 6. 12 Gray, 171. 111 Mass. 404.
- 1 SECTION 7. If a person has been acquitted by reason of a
2 variance between the indictment or complaint and the proof, or by
3 reason of a defect of form or substance in the indictment or com-
4 plaint, he may be again arraigned, tried and convicted for the same
5 crime on a new indictment or complaint, notwithstanding such for-
6 mer acquittal. — when not a bar. R. S. 123, § 5. G. S. 158, § 7. P. S. 200, § 7. 12 Pick. 496. 13 Allen, 554. 105 Mass. 189.
- 1 SECTION 8. A person shall not be punished for a crime unless
2 he has been legally convicted thereof by a court having competent
3 jurisdiction of the cause and of the person. No person to be punished until convicted. R. S. 123, § 6.
G. S. 158, § 8. P. S. 200, § 8.

CHAPTER 206.

OF CRIMES AGAINST THE SOVEREIGNTY OF THE COMMONWEALTH.

- 1 SECTION 1. Treason against this commonwealth shall consist
2 only in levying war against it, or in adhering to the enemies
3 thereof, giving them aid and comfort, and it shall not be bailable. Treason defined. Decl. of Rights, art. 25. C. L. 15, § 12; 263, § 2.
1696, 255, § 1. 1776-7, 32, §§ 2, 3. 1852, 259, § 4. 1871, 61.
1744-5, 6, § 1. R. S. 124, § 1. G. S. 159, § 1; 170, § 54. P. S. 201, § 1; 212, § 72.
- 1 SECTION 2. Whoever commits treason against this common-
2 wealth shall be punished by imprisonment in the state prison for
3 life. — punishment of. B. L. 94, § 12. C. L. 263, § 2.
1696, 255, § 1. 1744-5, 6, § 1. 1776-7, 32, § 2.
R. S. 124, § 2. 1852, 259, § 1. G. S. 159, § 2. P. S. 201, § 2.
- 1 SECTION 3. Whoever, having knowledge of the commission of
2 treason, conceals the same and does not as soon as may be disclose
3 and make known such treason to the governor, or to a justice of — misprision of. 1776-7, 32, §§ 4, 5. R. S. 124, § 3. G. S. 159, § 3. P. S. 201, § 3.

the supreme judicial court or the superior court, shall be guilty of 4
 misprision of treason, and shall be punished by a fine of not more 5
 than one thousand dollars or by imprisonment in the state prison 6
 for not more than five years, or in jail for not more than two years. 7

Proof of

treason.
 1776-7, § 32, § 11.
 R. S. 124, § 4.
 G. S. 150, § 4.
 P. S. 201, § 4.

SECTION 4. No person shall be convicted of treason except by 1
 the testimony of two witnesses to the same overt act of treason 2
 whereof he stands indicted, unless he confesses the same in open 3
 court. 4

Misuse of flag.
 1809, 254.
 1901, 153.

SECTION 5. Whoever publicly mutilates, tramples upon, de- 1
 faces or treats contemptuously the flag of the United States or of 2
 Massachusetts, whether such flag is public or private property, or 3
 whoever displays such flag or any representation thereof upon 4
 which are words, figures, advertisements or designs, shall be pun- 5
 ished by a fine of not less than ten nor more than one hundred 6
 dollars; but a flag which belongs to a grand army post, to a camp 7
 of the legion of Spanish war veterans or which is the property of or 8
 is used in the service of the United States or of this commonwealth 9
 may have the names of battles and the name and number of the 10
 organization to which such flag belongs inscribed thereon. Trial 11
 justices shall have jurisdiction of violations of the provisions of this 12
 section. 13

Display of
 foreign flag.
 1895, 115.

SECTION 6. Whoever displays the flag or emblem of a foreign 1
 country upon the outside of a state, county, city or town building 2
 or public school house shall be punished by a fine of not more than 3
 twenty dollars; but the provisions of this section shall not apply 4
 when a citizen of such foreign country becomes the guest of the 5
 United States or of this commonwealth, if the governor by procla- 6
 mation authorizes the flag of the country of which such guest is a 7
 citizen to be displayed upon public buildings other than school 8
 houses. 9

CHAPTER 207.

OF CRIMES AGAINST THE PERSON.

Murder

defined.
 1784, 69.
 R. S. 133, § 15.
 1858, 154, §§ 1-3.
 G. S. 160, §§ 1-3,
 7.
 P. S. 202, §§ 1-3,
 7.
 16 Gray, 1.
 12 Allen, 155.
 118 Mass. 36.

SECTION 1. Murder committed with deliberately premeditated 1
 malice aforethought, or with extreme atrocity or cruelty, or in the 2
 commission or attempted commission of a crime punishable with 3
 death or imprisonment for life, is murder in the first degree. 4
 Murder which does not appear to be in the first degree is murder 5
 in the second degree. Petit treason shall be prosecuted and pun- 6
 ished as murder. The degree of murder shall be found by the jury. 7

126 Mass. 253.

165 Mass. 45.

174 Mass. 246.

Punishment

for murder.
 B. L. 94, §§ 4-6.
 C. 1. 14, §§ 4, 5.
 1697, 17.
 1784, 44, § 1.
 1804, 123, § 1.

SECTION 2. Whoever is guilty of murder in the first degree 1
 shall suffer the punishment of death, and whoever is guilty of mur- 2
 der in the second degree shall be punished by imprisonment in the 3
 state prison for life. 4

R. S. 125, § 1.

1858, 154, §§ 4, 5.

G. S. 160, §§ 4, 5.

P. S. 202, §§ 4, 5.

1 SECTION 3. An inhabitant or resident of this commonwealth
2 who, by previous appointment or engagement made within the
3 commonwealth, fights a duel outside its jurisdiction, and in so
4 doing inflicts a mortal wound upon a person whereof he dies within
5 the commonwealth shall be guilty of murder within this common-
6 wealth, and may be indicted, tried and convicted in the county in
7 which the death occurs.

Murder in a
duel out of
common-
wealth.
R. S. 125, § 3.
G. S. 160, § 9.
P. S. 202, § 9.

1 SECTION 4. An inhabitant or resident of this commonwealth
2 who, by previous appointment or engagement made within the
3 same, becomes the second of either party in such duel and is pres-
4 ent as a second when a mortal wound is inflicted upon a person
5 whereof he dies within this commonwealth shall be an accessory
6 before the fact to murder in this commonwealth, and may be in-
7 dicted, tried and convicted in the county in which the death occurs.

Accessory in
duel.
R. S. 125, § 4.
G. S. 160, § 10.
P. S. 202, § 10.

1 SECTION 5. A person who is indicted under either of the two
2 preceding sections may plead a former conviction or acquittal of the
3 same crime in any other state or country; and if his plea is ad-
4 mitted or established, it shall be a bar to all further proceedings
5 against him for the same crime within this commonwealth.

Former con-
viction, etc.,
out of com-
monwealth a
bar, when.
R. S. 125, § 5.
G. S. 160, § 11.
P. S. 202, § 11.

1 SECTION 6. Whoever engages in a duel with a deadly weapon,
2 although no homicide ensues, or challenges another to fight such
3 duel, or sends or delivers a written or verbal message purporting
4 or intended to be such challenge, although no duel ensues, shall be
5 punished by imprisonment in the state prison for not more than
6 twenty years or by a fine of not more than one thousand dollars
7 and imprisonment in jail for not more than three years; and shall
8 be incapable of holding or of being elected or appointed to any
9 place of honor, profit or trust under the constitution or laws of this
10 commonwealth for twenty years after such conviction.

Engaging in
duel; challeng-
ing, etc.
1719-20, 1.
1728-9, 15, § 1.
1784, 9, §§ 1, 2.
1804, 123, § 6.
R. S. 125, § 6.
G. S. 160, § 12.
P. S. 202, § 12.

1 SECTION 7. Whoever accepts or knowingly carries or delivers
2 any such challenge or message, whether a duel ensues or not, and
3 whoever is present at the fighting of a duel with deadly weapons as
4 an aid, second or surgeon, or advises, encourages or promotes such
5 duel, shall be punished by imprisonment for not more than one
6 year or by a fine of not more than five hundred dollars; and shall
7 be incapable, as provided in the preceding section, for five years
8 after such conviction.

Accepting or
carrying
challenge and
abetting a duel.
1804, 123, § 7.
R. S. 125, § 7.
G. S. 160, § 13.
P. S. 202, § 13.

1 SECTION 8. Whoever posts another, or in writing or print
2 uses any reproachful or contemptuous language to or concerning
3 another, for not fighting a duel or for not sending or accepting a
4 challenge shall be punished by imprisonment for not more than
5 six months or by a fine of not more than one hundred dollars.

Posting an-
other for not
fighting duel.
R. S. 125, § 8.
G. S. 160, § 15.
P. S. 202, § 14.

1 SECTION 9. Whoever, by previous appointment or arrange-
2 ment, engages in a fight with another person shall be punished by
3 imprisonment in the state prison for not more than ten years or
4 by a fine of not more than five thousand dollars.

Prize fighting.
1849, 49, § 1.
G. S. 160, § 15.
P. S. 202, § 15.
7 Gray, 324.
[1 Op. A. G.
240.]

Aiding, advising, etc., prize fight.
1849, 49, § 2.
G. S. 160, § 16.
P. S. 202, § 17.
7 Gray, 324.

SECTION 10. Whoever is present at such fight as an aid, second or surgeon, or advises, encourages or promotes such fight, shall be punished by imprisonment in the state prison for not more than five years or by a fine of not more than one thousand dollars and by imprisonment in jail for not more than three years.

Leaving commonwealth to fight.
1849, 49, § 3.
G. S. 160, § 17.
P. S. 202, § 17.
108 Mass. 302.

SECTION 11. An inhabitant or resident of this commonwealth who, by previous appointment or engagement made in this commonwealth, leaves the same and engages in a fight with another person outside the limits thereof shall be punished by imprisonment in the state prison for not more than five years or by a fine of not more than five thousand dollars.

Boxing matches for reward.
1896, 422.

SECTION 12. Whoever engages in or gives or promotes a public boxing match or sparring exhibition, or whoever engages in a private boxing match or sparring exhibition for which the contestants have received or have been promised any pecuniary reward, remuneration or consideration whatsoever, directly or indirectly, shall be punished by a fine of not more than two hundred dollars or by imprisonment for not more than three months, or by both such fine and imprisonment.

Manslaughter.
1784, 44, § 2.
1804, 123, § 3.
1818, 124, § 2.
R. S. 125, § 9.
G. S. 160, § 18.
P. S. 202, § 18.

SECTION 13. Whoever commits manslaughter shall be punished by imprisonment in the state prison for not more than twenty years or by a fine of not more than one thousand dollars and imprisonment in jail for not more than three years.

Mayhem.
B. L. 87.
1804, 123, § 4.
R. S. 125, § 10.
G. S. 160, § 19.
P. S. 202, § 19.
133 Mass. 571.

SECTION 14. Whoever, with malicious intent to maim or disfigure, cuts out or maims the tongue, puts out or destroys an eye, cuts or tears off an ear, cuts, slits or mutilates the nose or lip, or cuts off or disables a limb or member, of another person, and whoever is privy to such intent, or is present and aids in the commission of such crime, shall be punished by imprisonment in the state prison for not more than twenty years or by a fine of not more than one thousand dollars and imprisonment in jail for not more than three years.

Assault with intent to murder, maim, etc.
1784, 65, § 3.
1804, 123, § 5.
1818, 124, § 3.
R. S. 125, § 11.
G. S. 160, § 20.
P. S. 202, § 20.
10 Gray, 11.
162 Mass. 495.

SECTION 15. Whoever assaults another with intent to commit murder, or to maim or disfigure his person in any way described in the preceding section, shall be punished by imprisonment in the state prison for not more than ten years or by a fine of not more than one thousand dollars and imprisonment in jail for not more than three years.

Attempt to murder by poisoning, etc.
1832, 62.
R. S. 125, § 12.
G. S. 160, § 21.
P. S. 202, § 21.
170 Mass. 18.

SECTION 16. Whoever attempts to commit murder by poisoning, drowning or strangling another person, or by any means which does not constitute an assault with intent to commit murder, shall be punished by imprisonment in the state prison for not more than twenty years or by a fine of not more than one thousand dollars and imprisonment in jail for not more than three years.

Robbery, being armed, etc.
1818, 124, § 1.
R. S. 125, § 13.
1839, 127.

SECTION 17. Whoever, being armed with a dangerous weapon, assaults another and robs, steals and takes from his person money or other property which may be the subject of larceny, with intent

4 if resisted to kill or maim the person robbed, or, being so armed,
 5 wounds or strikes the person robbed, shall be punished by impris-
 6 onment in the state prison for life.

G. S. 160, § 22.
 P. S. 202, § 22.
 11 Allen, 20.
 165 Mass. 133.

1 SECTION 18. Whoever, being armed with a dangerous weapon,
 2 assaults another with intent to rob or murder shall be punished by
 3 imprisonment in the state prison for not more than twenty years.

Assault with
 intent to rob,
 etc., being
 armed.
 1761-2, 21, § 1.

1784, 52, § 2.
 1804, 143, § 9.

1818, 124, § 3.
 R. S. 125, § 14.

G. S. 160, § 23.
 P. S. 202, § 23.

8 Gray, 387.

1 SECTION 19. Whoever, not being armed with a dangerous
 2 weapon, by force and violence, or by assault and putting in fear,
 3 robs, steals and takes from the person of another money or other
 4 property which may be the subject of larceny, shall be punished
 5 by imprisonment in the state prison for life or for any term of
 6 years.

Robbery, not
 being armed.
 C. L. 12, § 4.
 1692-3, 18, § 4.
 1711-12, 2, § 1.
 1761-2, 21, § 1.
 1784, 52, § 2.
 1804, 143, § 7.
 R. S. 125, § 15.
 G. S. 160, § 24.
 P. S. 202, § 24.

7 Mass. 242.

8 Cush. 215.

12 Allen, 541.

126 Mass. 252.

1 SECTION 20. Whoever, not being armed with a dangerous
 2 weapon, assaults another with force and violence and with intent
 3 to rob or steal shall be punished by imprisonment in the state
 4 prison for not more than ten years.

Assault with
 intent to rob,
 etc., not being
 armed.
 1804, 143, § 9.

P. S. 202, § 25.

12 Cush. 270.

R. S. 125, § 16.
 14 Gray, 393.

G. S. 160, § 25.
 167 Mass. 442.

1 SECTION 21. Whoever, with intent to commit larceny or any
 2 felony, confines, maims, injures or wounds, or attempts or threat-
 3 ens to kill, confine, maim, injure or wound, or puts any person
 4 in fear, for the purpose of stealing from a building, bank, safe,
 5 vault or other depository of money, bonds or other valuables, or
 6 by intimidation, force or threats compels or attempts to compel
 7 any person to disclose or surrender the means of opening any
 8 building, bank, safe, vault or other depository of money, bonds or
 9 other valuables, or attempts to break, burn, blow up or otherwise
 10 injure or destroy a safe, vault or other depository of money, bonds
 11 or other valuables in any building or place, shall, whether he suc-
 12 ceeds or fails in the perpetration of such larceny or felony, be
 13 punished by imprisonment in the state prison for life or for any
 14 term of years.

Confining or
 putting in fear
 a person for
 the purpose of
 stealing, etc.
 1876, 202.
 P. S. 202, § 26.
 165 Mass. 457.
 167 Mass. 434.
 168 Mass. 222.

1 SECTION 22. Whoever ravishes and carnally knows a female by
 2 force and against her will shall be punished by imprisonment in
 3 the state prison for life or for any term of years.

Rape.
 C. L. 15, § 15.
 1697, 18.
 1784, 68.
 1805, 97, § 1.
 R. S. 125, § 18.

G. S. 160, § 26.
 1871, 55.

P. S. 202, § 27.
 1886, 305.

1888, 391.
 1893, 466, § 1.

1852, 259, § 2.
 8 Gray, 489.
 105 Mass. 376.

1 SECTION 23. Whoever unlawfully and carnally knows and
 2 abuses a female child under the age of sixteen years shall be pun-
 3 ished by imprisonment in the state prison for life or for any term
 4 of years, or for any term in any other penal institution in the
 5 commonwealth.

— of child.
 C. L. 15, § 17.
 1697, 18.
 1784, 68.
 1805, 97, § 1.
 R. S. 125, § 18.
 1852, 259, § 2.
 G. S. 160, § 26.
 1871, 55.

1893, 466, § 2.

P. S. 202, § 27.
 4 Gray, 7.

1886, 305.
 165 Mass. 66.

1888, 391.
 170 Mass. 194.

1 SECTION 24. Whoever assaults a female with intent to commit
 2 a rape shall be punished by imprisonment in the state prison for
 3 life or for any term of years or by a fine of not more than one
 4 thousand dollars and imprisonment in jail for not more than three
 5 years.

— assault, with
 intent to com-
 mit.
 1784, 65, § 3.
 1805, 97, § 3.
 1815, 86.
 R. S. 125, § 19.
 G. S. 160, § 27.
 P. S. 202, § 28.

4 Met. 354.

116 Mass. 346.

143 Mass. 32.

162 Mass. 466.

165 Mass. 66.

Attempt to
extort money,
etc., by threat.
R. S. 125, § 17.
1853, 412.
G. S. 160, § 28.
P. S. 202, § 29.
12 Cnsh. 88.
101 Mass. 27.
106 Mass. 9.
108 Mass. 15.
122 Mass. 19.
128 Mass. 55.
130 Mass. 59.
145 Mass. 181.
148 Mass. 27.
163 Mass. 291.

SECTION 25. Whoever, verbally or by a written or printed communication, maliciously threatens to accuse another of a crime or offence, or by such communication maliciously threatens an injury to the person or property of another, with intent thereby to extort money or any pecuniary advantage, or with intent to compel the person so threatened to do any act against his will, shall be punished by imprisonment in the state prison for not more than fifteen years, or in the house of correction for not more than ten years, or by a fine of not more than five thousand dollars, or by both such fine and imprisonment.

Kidnapping,
etc.
B. L. 94, § 10.
C. L. 15, § 10.
1784, 72, § 10.
1787, 48, § 1.
R. S. 125, § 20.
G. S. 160, § 30.
P. S. 202, § 30.
1901, 428.
12 Met. 56.
9 Gray, 262.
5 Allen, 518.

SECTION 26. Whoever, without lawful authority, forcibly or secretly confines or imprisons another person within this commonwealth against his will, or forcibly carries or sends such person out of this commonwealth, or forcibly seizes and confines or inveigles or kidnaps another person, with intent either to cause him to be secretly confined or imprisoned in this commonwealth against his will, or to cause him to be sent out of this commonwealth against his will or in any way held to service against his will, and whoever sells or in any manner transfers for any term the service or labor of a negro, mulatto or other person of color who has been unlawfully seized, taken, inveigled or kidnapped from this commonwealth to any other state, place or country, shall be punished by imprisonment in the state prison for not more than ten years or by a fine of not more than one thousand dollars and imprisonment in jail for not more than two years. Whoever commits any offence described in this section with the intent to extort money or other valuable thing thereby shall be punished by imprisonment in the state prison for not more than twenty-five years.

Venue.
R. S. 125, § 21.
G. S. 160, § 31.
P. S. 202, § 31.

SECTION 27. A crime described in the preceding section may be tried in the county in which it is committed or in any county in or to which the person so seized, taken, inveigled, kidnapped or sold, or whose services are so sold or transferred, is taken, confined, held, carried or brought; and upon the trial of any such crime, the consent thereto of the person so taken, inveigled, kidnapped or confined shall not be a defence unless the jury finds that such consent was not obtained by fraud nor extorted by duress or threats.

Poisoning
food, medicine,
spring, etc.
R. S. 125, § 22.
G. S. 160, § 32.
P. S. 202, § 32.
140 Mass. 443.

SECTION 28. Whoever mingles poison with food, drink or medicine with intent to kill or injure another person, or wilfully poisons any spring, well or reservoir of water with such intent, shall be punished by imprisonment in the state prison for life or for any term of years.

Assaults not
before men-
tioned.
R. S. 125, § 23.
G. S. 160, § 33.
P. S. 202, § 33.

SECTION 29. Whoever assaults another with intent to commit a felony shall, if the punishment of such assault is not hereinbefore provided, be punished by imprisonment in the state prison for not more than ten years or by a fine of not more than one thousand dollars and imprisonment in jail for not more than three years.

Negligence,
etc., of person
having care of

SECTION 30. Whoever, having the management or control of or over a steamboat or other public conveyance which is used for the

3 common carriage of persons, is guilty of gross negligence in or
4 relative to the management or control of such steamboat or other
5 public conveyance, while being so used for the common carriage of
6 persons, shall be punished by a fine of not more than five thousand
7 dollars or by imprisonment in jail for not more than three years.

public convey-
ance.
1853, 418.
G. S. 160, § 35.
P. S. 202, § 34.

1 SECTION 31. A driver of a stage coach or other vehicle for the
2 conveyance of passengers for hire, who, when a passenger is within
3 or upon such coach or vehicle, leaves the horses thereof without a
4 suitable person to take the charge and guidance of them, or without
5 fastening them in a safe and prudent manner, shall be punished by
6 imprisonment for not more than two months or by a fine of not
7 more than fifty dollars.

Driver of
stage coach,
etc., leaving
horses without
charge, etc.
1826, 140.
R. S. 51, § 4.
G. S. 160, § 36.
P. S. 202, § 35.

CHAPTER 208.

OF CRIMES AGAINST PROPERTY.

1 SECTION 1. Whoever wilfully and maliciously burns the dwell-
2 ing house of another or a building adjoining such dwelling house,
3 or wilfully and maliciously sets fire to a building by the burning
4 whereof such dwelling house is burned, shall be punished by
5 imprisonment in the state prison for life or for any term of years.

Burning dwell-
ing house, etc.
C. L. 52, § 1.
1705-6, 9.
1784, 58, §§ 1, 2.
1804, 131, §§ 1, 2.
1830, 72, § 1.
R. S. 126, §§ 1, 2.
1852, 250, § 3.
G. S. 161, § 1.

1871, 76.
P. S. 203, § 1.

3 Cush. 525.
10 Cush. 478.

110 Mass. 403.
131 Mass. 421.

150 Mass. 332.
151 Mass. 491.

1 SECTION 2. Whoever wilfully and maliciously burns in the
2 night time a meeting house, church, court house, town house, col-
3 lege, academy, jail or other building which has been erected for
4 public use, or a banking house, warehouse, store, manufactory or
5 mill of another being with the property therein of the value of one
6 thousand dollars, or a barn, stable, shop or office of another within
7 the curtilage of a dwelling house, or any other building by the
8 burning whereof any building mentioned in this section is burned
9 in the night time, shall be punished by imprisonment in the state
10 prison for life or for any term of years.

—in night
time.
C. L. 52, § 1.
1705-6, 9.
1784, 58, § 2.
1804, 131, § 2.
R. S. 126, § 3.
G. S. 161, § 2.
1871, 76.
P. S. 203, § 2.
10 Cush. 480.
2 Allen, 159.
134 Mass. 527.
172 Mass. 187.

1 SECTION 3. Whoever wilfully and maliciously burns in the day
2 time a building, the burning of which in the night time might be
3 punished under the provisions of the preceding section, shall be
4 punished by imprisonment in the state prison for not more than
5 ten years.

—in day time.
C. L. 52, § 1.
1705-6, 9.
1784, 58, § 2.
1804, 131, § 3.
R. S. 126, § 4.
G. S. 161, § 3.

P. S. 203, § 3.

1 SECTION 4. Whoever wilfully and maliciously burns a banking
2 house, warehouse, store, manufactory, mill, barn, stable, shop,
3 office, outhouse or other building of another, which is not described
4 in section two, or a bridge, lock, dam, flume, ship or vessel of
5 another, shall be punished by imprisonment in the state prison
6 for not more than ten years.

Burning of
building of
less value than
one thousand
dollars, etc.,
or bridge,
ship, etc.
C. L. 52, § 1.
1705-6, 9.
1784, 58, § 2.
1804, 131, § 3.

G. S. 161, § 4.
P. S. 203, § 4.

1 Met. 258.
1 Gray, 495.

15 Gray, 480.
150 Mass. 332.

151 Mass. 491.
167 Mass. 420.

1 SECTION 5. Whoever wilfully and maliciously burns or other-
2 wise destroys or injures a pile or parcel of wood, boards, timber or

— of wood,
fence, corn,
grain, tree,
soil, etc.

C. L. 51, § 2;
52, § 1.
1705-6, 9.
1784, 58, §§ 3, 4.
1804, 131, § 4.
R. S. 126, § 6.
G. S. 161, § 5.
P. S. 203, § 5.

other lumber, or any fence, bars or gate, or a stack of grain, hay 3
or other vegetable product, or any vegetable product severed from 4
the soil and not stacked, or any standing tree, grain, grass or other 5
standing product of the soil, or the soil itself, of another, shall be 6
punished by imprisonment in the state prison for not more than five 7
years or by a fine of not more than five hundred dollars and im- 8
prisonment in jail for not more than one year. 9

Wife liable for
burning prop-
erty of hus-
band.
R. S. 126, § 7.
G. S. 161, § 6.
P. S. 203, § 6.

SECTION 6. The provisions of the preceding sections shall apply 1
to a married woman who commits any of the crimes therein de- 2
scribed, although the property burned or set fire to belongs partly 3
or wholly to her husband. 4

Setting fire to
trees.
1882, 163.

SECTION 7. Whoever by wantonly or recklessly setting fire to 1
any material causes injury to, or the destruction of, any growing or 2
standing wood of another shall be punished by a fine of not more 3
than one hundred dollars or by imprisonment for not more than six 4
months. 5

Setting fires
negligently.
1886, 296, § 1.

SECTION 8. Whoever wilfully or without reasonable care sets 1
a fire upon land of another whereby the property of another is in- 2
jured, or whoever negligently or wilfully suffers any fire upon his 3
own land to extend beyond the limits thereof, whereby the woods 4
or property of another are injured, shall be punished by a fine of 5
not more than two hundred and fifty dollars. 6

Same subject.
1897, 254, §§ 1, 9.

SECTION 9. Whoever in a town which accepts the provisions of 1
this section or has accepted the corresponding provisions of earlier 2
laws sets a fire on land which is not owned or controlled by him 3
and before leaving the same neglects to entirely extinguish such 4
fire, or whoever wilfully or negligently sets a fire on land which is 5
not owned or controlled by him whereby property is endangered 6
or injured, or whoever wilfully or negligently suffers a fire upon 7
his own land to escape beyond the limits thereof to the injury of 8
another, shall be punished by a fine of not more than one hundred 9
dollars, or by imprisonment in jail for not more than one month, 10
or by both such fine and imprisonment; and shall also be liable for 11
all damages caused thereby. Such fine shall be equally divided 12
between the complainant and the town. 13

Burning in-
sured prop-
erty.
R. S. 126, § 8.
G. S. 161, § 7.
P. S. 203, § 7.
114 Mass. 272.
155 Mass. 68.
177 Mass. 267.

SECTION 10. Whoever, with intent to injure the insurer, burns 1
a building or any goods, wares, merchandise or other chattels be- 2
longing to himself or another, and which are at the time insured 3
against loss or damage by fire, shall be punished by imprisonment 4
in the state prison for not more than twenty years. 5

Cutting bell
rope, etc.,
before fire.
1855, 446, § 1.
G. S. 161, § 8.
P. S. 203, § 8.

SECTION 11. Whoever, within twenty-four hours prior to the 1
burning of a building or other property, wilfully, intentionally 2
and without right cuts or removes a bell rope in the vicinity of 3
such building or property or cuts, injures or destroys an engine or 4
hose or other apparatus belonging to an engine in said vicinity shall 5
be punished by a fine of not more than five hundred dollars or by 6
imprisonment for not more than two years. 7

1 SECTION 12. Whoever, during the burning of a building or
 2 other property, wilfully and maliciously cuts or removes a bell
 3 rope in the vicinity of such building or property, or otherwise pre-
 4 vents an alarm being given, or whoever cuts, injures or destroys an
 5 engine, or hose or other apparatus belonging to an engine, in said
 6 vicinity, or otherwise wilfully and maliciously prevents or obstructs
 7 the extinction of a fire shall be punished by imprisonment in the
 8 state prison for not more than seven years or in jail for not more
 9 than three years or by a fine of not more than one thousand dollars.

Cutting bell
 rope, etc.,
 during fire,
 or preventing
 alarm or ex-
 tinction of fire.
 1855, 446, § 2.
 G. S. 161, § 9.
 P. S. 203, § 9.

1 SECTION 13. Whoever wantonly or maliciously injures a fire
 2 engine or the apparatus belonging thereto shall be punished by a
 3 fine of not more than five hundred dollars or by imprisonment for
 4 not more than two years, and shall be further ordered to recognize
 5 with sufficient surety or sureties for his good behavior during such
 6 term as the court shall order.

Injuring fire
 engines.
 1801, 29.
 R. S. 18, § 23.
 G. S. 24, § 22.
 P. S. 35, § 26.

1 SECTION 14. Whoever breaks and enters a dwelling house in
 2 the night time, with intent to commit a felony, or whoever, after
 3 having entered with such intent, breaks such dwelling house in the
 4 night time, any person being then lawfully therein, and the offender
 5 being armed with a dangerous weapon at the time of such breaking
 6 or entry, or so arming himself in such house, or making an actual
 7 assault on a person lawfully therein, shall be punished by impris-
 8 onment in the state prison for life or for any term of not less than
 9 ten years. 1888, 135, § 1. 22 Pick. 1. 4 Met. 357. 105 Mass. 588.

Burglary,
 being armed or
 making an
 assault.
 C. L. 13, § 1.
 1692-3, 18, § 4.
 1715-16, 1.
 1769-70, 16, § 2.
 1784, 48.
 1805, 101, § 1.
 R. S. 126, § 9.
 1830, 127.
 G. S. 161, § 10.
 1871, 76.
 P. S. 203, § 10.

1 SECTION 15. Whoever breaks and enters a dwelling house in
 2 the night time, with such intent, or, having entered with such intent,
 3 breaks such dwelling house in the night time, the offender not being
 4 armed, nor arming himself in such house, with a dangerous weapon,
 5 nor making an assault upon a person lawfully therein, shall be pun-
 6 ished by imprisonment in the state prison for not more than twenty
 7 years and, if he shall have been previously convicted of any crime
 8 named in this or the preceding section, for not less than five years.

— not being
 armed, etc.
 C. L. 13, § 1.
 1692-3, 18, § 4.
 1715-16, 1.
 1769-70, 16, § 3.
 1784, 48.
 1805, 101, § 2.
 1830, 72, § 2.
 R. S. 126, § 10.
 G. S. 161, § 11.
 P. S. 203, § 11.
 1888, 135, § 2.
 4 Met. 357.

1 SECTION 16. Whoever, in the night time, breaks and enters a
 2 building, ship or vessel, with intent to commit a felony, shall be
 3 punished by imprisonment in the state prison for not more than
 4 twenty years.

Breaking in
 night building
 or ship.
 C. L. 204, § 3.
 1692-3, 18, § 4.

1804, 143, § 4.
 R. S. 126, § 11.
 1839, 31.

1851, 156, § 1.
 G. S. 161, § 12.
 P. S. 203, § 12.

3 Met. 316.
 6 Met. 238.
 12 Met. 240.

6 Cush. 181.
 108 Mass. 1.
 130 Mass. 45.

1 SECTION 17. Whoever, in the night time, enters without break-
 2 ing, or breaks and enters in the day time, a building, ship or vessel,
 3 with intent to commit a felony, the owner or any other person law-
 4 fully therein being put in fear, shall be punished by imprisonment
 5 in the state prison for not more than ten years.

R. S. 126, § 12.

1851, 156, § 2.

G. S. 161, § 13.

P. S. 203, § 13.

Entering in
 night without
 breaking, or
 breaking, etc.,
 in day time.
 C. L. 204, § 3.
 1692-3, 18, § 4.
 1784, 66, § 8.
 1804, 143, § 5.

1 SECTION 18. Whoever, in the night time, enters a dwelling
 2 house without breaking, or breaks and enters in the day time a
 3 building, ship or vessel, with intent to commit a felony, no person
 4 lawfully therein being put in fear, shall be punished by imprison-

Entering
 dwelling house
 in night, or
 breaking, etc.,
 without put-
 ting in fear.

1784, 66, § 8.
1805, 101, § 4.
R. S. 126, § 13.
1851, 156, § 3.
G. S. 161, § 14.

ment in the state prison for not more than ten years or by a fine 5
of not more than five hundred dollars and imprisonment in jail for 6
not more than two years. 1869, 386. P. S. 203, § 15. 122 Mass. 454. 7

Breaking and
entering rail-
road car, etc.
1874, 70; 372,
§ 158.
P. S. 203, § 14.

SECTION 19. Whoever breaks and enters, or enters in the night 1
time without breaking, a railroad car, with intent to commit a 2
felony, shall be punished by imprisonment in the state prison for 3
not more than ten years or by a fine of not more than five hundred 4
dollars and imprisonment in the house of correction for not more 5
than two years. 6

Stealing in
building, ship,
etc.
1804, 143, § 6.
1830, 72, § 3.
R. S. 126, § 14.
1843, 1, § 1.

SECTION 20. Whoever steals in a building, ship, vessel or rail- 1
road car shall be punished by imprisonment in the state prison for 2
not more than five years or by a fine of not more than five hundred 3
dollars or by imprisonment in jail for not more than two years. 4

1845, 28. P. S. 203, § 16. 6 Cush. 181. 111 Mass. 429.
1851, 156, § 4. 1896, 389. 3 Gray, 450. 129 Mass. 101.
G. S. 161, § 15. 2 Cush. 583. 8 Gray, 469. 135 Mass. 269.

Refusal to
deliver stolen
property, etc.
1879, 168.
P. S. 203, § 17.

SECTION 21. Whoever, having been convicted, either as prin- 1
cipal or accessory, of burglary or robbery, or of any of the crimes 2
described in sections seventeen to twenty, inclusive, of chapter two 3
hundred and seven, or of breaking and entering or of entering a 4
building with intent to commit robbery or larceny, has in his 5
possession or control money, goods, bonds or bank notes, or any 6
paper of value, or any property of another, which was obtained or 7
taken by means of such crime, and, upon being requested by the 8
lawful owner thereof to deliver the same to him, refuses or fails so 9
to do while having power to deliver the same, shall be punished by 10
imprisonment in the state prison for not more than five years or in 11
the jail or house of correction for not more than two years. 12

Embezzling,
etc., of prop-
erty, at a fire,
to be deemed
larceny.
1711-12, 5, § 4.
1744-5, 30, § 4.
1796, 88, § 4.
R. S. 18, § 8.
G. S. 24, § 8.
P. S. 35, § 8.

SECTION 22. Whoever steals, conveys away or conceals any 1
furniture, goods, chattels, merchandise or effects of persons whose 2
houses or buildings are on fire or are endangered thereby, and does 3
not, within two days thereafter, restore the same or give notice of 4
his possession thereof to the owner if known, or, if unknown, to 5
the mayor or one of the aldermen, selectmen or firewards of the 6
place, shall be guilty of larceny. 7

Stealing at a
fire.
R. S. 126, § 15.
G. S. 161, § 16.
P. S. 203, § 18.

SECTION 23. Whoever steals in a building which is on fire, or 1
steals property which has been removed in consequence of an alarm 2
caused by fire, shall be punished by imprisonment in the state 3
prison for not more than five years or by a fine of not more than 4
five hundred dollars and imprisonment in jail for not more than 5
two years. 6

Larceny from
the person.
1784, 66, § 2.
1804, 143, § 8.
R. S. 126, § 16.
G. S. 161, § 17.
P. S. 203, § 19.

SECTION 24. Whoever commits larceny by stealing from the 1
person of another shall be punished by imprisonment in the state 2
prison for not more than five years or in jail for not more than two 3
years. 3 Cush. 235. 12 Allen, 182. 99 Mass. 431. 105 Mass. 169. 138 Mass. 483. 4

Subjects of
larceny.
1784, 66, § 1.
1804, 143, § 1.
R. S. 126, § 17.
G. S. 161, § 18.

SECTION 25. Larceny may be committed of a bank note, bond, 1
promissory note, bill of exchange or other bill, order or certificate, 2
or of a book of accounts for or concerning money or goods due or 3

4 to become due or to be delivered, or of a deed or writing contain-
 5 ing a conveyance of land, or of any other valuable contract in
 6 force, or of a receipt, release or defeasance, or of a writ, process,
 7 certificate of title or duplicate certificate issued under the provisions
 8 of chapter one hundred and twenty-eight, or of a public record.

P. S. 203, § 20.
 1898, 562, § 111.
 7 Met. 475.
 9 Met. 273.
 4 Gray, 416.
 8 Gray, 492.
 100 Mass. 206.
 103 Mass. 425.

1 SECTION 26. Whoever steals, or, with intent to defraud, obtains
 2 by a false pretence, or whoever unlawfully and, with intent to steal
 3 or embezzle, converts or secretes with intent to convert, the money
 4 or personal chattel of another, whether such money or personal
 5 chattel is or is not in his possession at the time of such conversion
 6 or secreting, shall be guilty of larceny and shall, if the value of
 7 the property stolen exceeds one hundred dollars, be punished by
 8 imprisonment in the state prison for not more than five years or by
 9 a fine of not more than six hundred dollars and imprisonment in jail
 10 for not more than two years; or, if the value of the property stolen
 11 does not exceed one hundred dollars, shall be punished by impris-
 12 onment in jail for not more than one year or by a fine of not more
 13 than three hundred dollars; or, if the property was stolen from the
 14 conveyance of a common carrier or of a person or corporation car-
 15 rying on an express business and does not exceed the value of one
 16 hundred dollars, shall be punished by imprisonment in the state
 17 prison or jail for not more than three years or by a fine of not more
 18 than five hundred dollars, or by both such fine and imprisonment.

126 Mass. 467.
 127 Mass. 446.
 128 Mass. 79.

129 Mass. 104.
 130 Mass. 285.
 132 Mass. 16.

141 Mass. 571.
 149 Mass. 179.
 165 Mass. 526.

166 Mass. 513.
 169 Mass. 89.
 172 Mass. 248.

Simple lar-
 ceny.
 C. L. 13, §§ 2, 3.
 1692-3, 18, § 3.
 1784, 66, § 1.
 1804, 143, § 1.
 1815, 136, § 1.
 1834, 186, §§ 1, 3.
 R. S. 126, §§ 17,
 29-32.
 1857, 233.
 G. S. 161, §§ 18,
 35, 38, 41, 53, 54.
 P. S. 203, §§ 20,
 37, 40, 43, 58, 59.
 1889, 458.
 1899, 316, § 1.
 6 Mass. 72.
 4 Pick. 177.
 19 Pick. 179.
 21 Pick. 515.
 11 Met. 64.
 9 Gray, 114.
 1 Allen, 500.
 5 Allen, 502.
 11 Allen, 233,
 266.
 12 Allen, 181.
 107 Mass. 486.
 108 Mass. 309.
 118 Mass. 443.
 124 Mass. 449.

1 SECTION 27. Whoever by a false pretence, with intent to de-
 2 fraud, obtains the signature of a person to a written instrument,
 3 the false making whereof would be a forgery, shall be punished by
 4 imprisonment in the state prison for not more than ten years, or by
 5 a fine of not more than five hundred dollars and imprisonment in
 6 the jail for not more than two years.

Fraudulently
 obtaining sig-
 nature.
 R. S. 126, § 32.
 G. S. 161, § 54.
 P. S. 203, § 59.
 110 Mass. 64.
 114 Mass. 325.

1 SECTION 28. The provisions of the two preceding sections shall
 2 not apply to a purchase of property by means of a false pretence
 3 relative to the purchaser's means or ability to pay, if, by the terms
 4 of the purchase, payment therefor is not to be made upon or before
 5 the delivery of the property purchased, unless such pretence is
 6 made in writing and is signed by the person to be charged.

Limitation of
 two preceding
 sections.
 1854, 12.
 G. S. 161, § 54.
 P. S. 203, § 59.
 1899, 316, § 2.
 115 Mass. 481.

1 SECTION 29. Whoever steals or for any fraudulent purpose de-
 2 stroys, mutilates or conceals a will, codicil or other testamentary
 3 instrument shall be punished by imprisonment in the state prison
 4 for not more than five years or in the house of correction for not
 5 more than two years. An indictment for a violation of the pro-
 6 visions of this section need not contain any allegation of value or
 7 ownership; and in the trial of such an indictment, no disclosure
 8 made by any person under the provisions of section fifteen of chap-
 9 ter one hundred and thirty-five shall be used in evidence against
 10 him.

Larceny and
 destruction of
 wills.
 G. S. 161, §§ 19,
 20.
 P. S. 203, §§ 21,
 22.
 1890, 391.

1 SECTION 30. Whoever is convicted by a police, district or mu-
 2 nicipal court or before a trial justice of stealing money or goods

Larceny of
 property not
 exceeding five

dollars in value. 1784, 66, § 4. 1804, 143, § 2. 1834, 151, §§ 2, 3. 1835, 54, § 1. R. S. 126, § 18; 143, §§ 5, 6. 1837, 217. 1851, 346. G. S. 120, § 41; 161, § 21. P. S. 203, § 23.

not exceeding the value of five dollars may be committed to the house of correction or workhouse in the city or town in which the crime was committed, for not more than six months; or he may be punished by a fine of not more than fifteen dollars, either with or without a condition, that, if it is not paid within a time specified, he shall be so committed for a term designated in the sentence.

Common and notorious thief. 1784, 66, §§ 6, 7. 1804, 143, § 3. R. S. 126, § 19. G. S. 161, § 22. P. S. 203, § 24. 22 Pick. 1. 3 Met. 457. 4 Met. 361. 11 Met. 575, 581. 12 Met. 246. 175 Mass. 202.

SECTION 31. Whoever, having been convicted, upon indictment, of larceny or of being accessory to larceny before the fact, afterward commits a larceny or is accessory thereto before the fact, and is convicted thereof upon indictment, and whoever is convicted at the same sitting of the court, as principal or accessory before the fact, of three distinct larcenies, shall be adjudged a common and notorious thief, and shall be punished by imprisonment in the state prison for not more than twenty years or in jail for not more than three years.

Second conviction of larceny of a bicycle. 1897, 409.

SECTION 32. Whoever is convicted of a second offence of the larceny of a bicycle shall, if the value of the bicycle stolen exceeds ten dollars, be punished by imprisonment in the state prison for not more than five years or by a fine of not more than two hundred dollars or by imprisonment in jail for not more than two years.

Larceny of paper designed for bank bills, etc. 1858, 67, § 1. G. S. 161, § 23. P. S. 203, § 25.

SECTION 33. Whoever commits larceny of a printed piece of paper or blank designed for issue by any incorporated bank or banking company in the United States as a bank bill, certificate or promissory note, or printed by means of an engraved plate designed for printing such pieces of paper or blanks, with intent to injure or defraud either by uttering or passing the same, or causing or allowing the same to be uttered or passed as true, either with or without alteration or addition, shall be punished by imprisonment in the state prison for life or for any term of years.

Printer, etc., retaining such paper, etc., with intent to pass, etc. 1858, 67, § 2. G. S. 161, § 24. P. S. 203, § 26.

SECTION 34. Whoever, having been employed to print or having assisted in printing a printed piece of paper or blank described in the preceding section, or having been intrusted with the care or custody thereof, retains it in his possession without the knowledge and consent of the corporation for which it was printed, with intent to injure or defraud either by uttering or passing it or causing or allowing it to be uttered or passed as true, either with or without alteration or addition, shall be punished by imprisonment in the state prison for life or for any term of years.

Larceny of things annexed to the realty. 1851, 151, §§ 1-3. G. S. 161, §§ 25-27. P. S. 203, §§ 27-29.

SECTION 35. Whoever by a trespass, with intent to steal, takes and carries away anything which is parcel of the realty or is annexed thereto, the property of another and of value, against his will, shall be guilty of such simple or aggravated larceny as he would be guilty of if such property were personal property. Any person may become an accessory to such larceny before or after the fact, or may become a receiver of the property stolen, in like manner as if the property stolen were personal, and shall be punished accordingly. The same courts and justices as would have

10 jurisdiction if the property stolen were personal property shall
11 have jurisdiction of such crimes.

1 SECTION 36. The stealing of such real property may be a lar-
2 ceny from one or more tenants, sole, joint or in common, in fee,
3 for life or years, at will or sufferance, mortgagors or mortgagees,
4 in possession of the same, or who may have an action of tort
5 against the offender for trespass upon the property, but not from
6 one having only the use or custody thereof. The larceny may be
7 from a wife in possession, if she is authorized by law to hold such
8 property as if sole, otherwise her occupation may be the possession
9 of the husband. If such property which was of a person deceased
10 is stolen, it may be a larceny from any one or more heirs, de-
11 visees, reversioners, remaindermen or others, who have a right
12 upon such decease to take possession, but not having entered, as it
13 would be after entry. The larceny may be from a person whose
14 name is unknown, if it would be such if the property stolen were
15 personal, and may be committed by those who have only the use or
16 custody of the property, but not by a person against whom no
17 action of tort could be maintained for acts like those constituting
18 the larceny.

From whom
and by whom.
1851, 151, §§ 4, 5.
G. S. 161, §§ 2*,
29,
P. S. 203, §§ 30,
31.

1 SECTION 37. Whoever, without the consent of the owner and
2 with a felonious intent, takes a beast or bird which is ordinarily
3 kept in confinement and is not the subject of larceny at common
4 law shall be guilty of larceny.

Larceny of
beast or bird.
1850, 303.
G. S. 161, § 30.
P. S. 203, § 32.

1 SECTION 38. Whoever wrongfully removes the collar from or
2 steals a dog which is licensed and collared as provided in chapter
3 one hundred and two shall be punished by a fine of not more than
4 fifty dollars; and whoever wrongfully kills, maims, entices or ear-
5 ries away such dog shall be liable to its owner for its value in an
6 action of tort. Whoever distributes or exposes a poisonous sub-
7 stance, with intent that it shall be eaten by a dog, shall be punished
8 by a fine of not less than ten nor more than fifty dollars.

Removing col-
lar or poison-
ing, etc., dog.
1858, 139, § 2.
1859, 225, §§ 4, 5.
G. S. 88, § 57.
P. S. 102, § 88.

1 SECTION 39. An officer who arrests a person charged as principal
2 or accessory in a robbery or larceny shall secure the property which
3 is alleged to have been stolen, annex a schedule thereof to his return
4 and be answerable for the same; and, upon conviction of the offend-
5 er, it shall be restored to the owner.

Officer making
arrest to
secure, etc.,
goods stolen.
1804, 143, § 15.
R. S. 126, § 25.
G. S. 161, § 31.
P. S. 203, § 33.
21 Pick. 156.

1 SECTION 40. If a person who is arrested upon a charge of
2 burglary, robbery or larceny, forfeits his recognizance or escapes
3 after having been committed to jail for trial, the court before which
4 the case would have been tried shall have the same authority to
5 order a recompense and allowance to the prosecutor, and to the
6 officer who has secured and kept the property, as is provided in the
7 preceding section.

— when pris-
oner forfeits
recognizance,
or escapes.
1841, 33.
G. S. 161, § 33.
P. S. 203, § 35.

1 SECTION 41. Whoever makes or mends, or begins to make or
2 mend, or knowingly has in his possession, an engine, machine, tool
3 or implement adapted and designed for cutting through, forcing or
4 breaking open a building, room, vault, safe or other depository, in

Making, hold-
ing, using, etc.,
burglarious
instrument.
1853, 194.
G. S. 161, § 34.

P. S. 203, § 36.
8 Gray, 375.
138 Mass. 156.

order to steal therefrom money or other property, or to commit any other crime, knowing the same to be adapted and designed for the purpose aforesaid, with intent to use or employ or allow the same to be used or employed for such purpose, shall be punished by imprisonment in the state prison for not more than ten years or by a fine of not more than one thousand dollars and imprisonment in jail for not more than three years.

Making, holding, using, etc., by employee in state treasury.
1791, 59, § 5.
R. S. 13, § 23;
126, § 28.

SECTION 42. A person employed in the treasury of this commonwealth who commits a fraud or embezzlement therein shall be punished by a fine of not more than two thousand dollars or by imprisonment in the state prison for life or for any term of years.

G. S. 161, § 36.

P. S. 203, § 38.

— by city, town or county officer.
1855, 487.
G. S. 161, § 37.
P. S. 203, § 39.

SECTION 43. A county, city or town officer who embezzles or fraudulently converts, or who fraudulently takes or secretes with intent so to do, effects or property which belong to or are in possession of said county, city or town, shall be punished by imprisonment in the state prison for not more than ten years or by a fine of not more than one thousand dollars and imprisonment in jail for not more than two years.

— by officer, etc., of bank.
1783, 53, § 1.
1824, 51.
1828, 96, § 26.
R. S. 126, § 27.
1846, 171, § 1.
G. S. 161, § 39.
P. S. 203, § 41.
8 Met. 247.
1 Allen, 557.
97 Mass. 30.
101 Mass. 204.
116 Mass. 1.
137 Mass. 98.
173 Mass. 541.

SECTION 44. An officer of an incorporated bank, or a person in the employment of such bank, who fraudulently converts, or fraudulently takes and secretes with intent so to do, any bullion, money, note, bill or other security for money which belongs to and is in possession of such bank, or which belongs to any person and is deposited therein, shall, whether intrusted with the custody thereof or not, be guilty of larceny in said bank, and shall be punished by imprisonment in the state prison for not more than ten years or by a fine of not more than one thousand dollars and imprisonment in jail for not more than two years.

Taking by accomplice deemed taking by officer of bank, etc.
1834, 186, § 2.
R. S. 133, § 10.
1845, 215.
1846, 171, §§ 2, 3.
G. S. 161, §§ 40, 42.
1878, 186.
P. S. 203, §§ 42, 44.
8 Met. 247.

SECTION 45. In prosecutions for such crimes, the fraudulent taking or receiving by any person of bullion, money, notes, bills or other security for money which belongs to such bank, by reason of an unlawful confederacy or agreement between him and an officer of said bank or any person in the employment thereof, with intent to defraud the same, shall be deemed to be a fraudulent taking by such officer or person in the employment of the bank to his own use, within the meaning of the preceding section; and it shall not be necessary, upon the trial, to identify the particular bullion, money, note, bill or security for money which is so taken or received. Upon the trial of the crime of embezzling, fraudulently converting or fraudulently taking and secreting, with intent so to embezzle or convert, the bullion, money, notes, bank notes, checks, drafts, bills of exchange, obligations or other securities for money of any person, bank, corporation, partnership, county, city or town by a cashier or other officer, clerk, agent or servant of such person, bank, corporation, partnership, county, city or town, evidence may be given of any such embezzlement, fraudulent conversion or taking with such intent committed within six months after the time stated in the indictment.

1 SECTION 46. A receiver or other officer appointed by a court
 2 of record, who embezzles or fraudulently converts, or fraudulently
 3 takes or secretes with intent so to do, effects or property which
 4 is in his possession by virtue of such appointment shall be guilty of
 5 larceny, and shall be punished by imprisonment in the state prison
 6 for not more than ten years, or by a fine of not more than one
 7 thousand dollars and imprisonment in jail for not more than two
 8 years.

Embezzlement
 by receiver,
 etc.
 1874, 79.
 P. S. 203, § 45.

1 SECTION 47. A broker, or officer, manager or agent of a corpo- — by broker,
 2 ration doing the business of brokers, who, having been intrusted, etc.
 3 solely or jointly, with money, stock or security for the payment 1892, 138.
 4 of money, with any direction in writing to invest, dispose of,
 5 apply, pay or deliver such money, stock or security, or any part
 6 thereof, or the proceeds or any part of the proceeds thereof, in any
 7 manner, for any purpose or to any person mentioned or specified in
 8 such direction, in violation of good faith and contrary to the terms
 9 of such direction, embezzles or fraudulently converts such money,
 10 stock or security, or any part thereof, or the proceeds or any part
 11 of the proceeds thereof, shall be punished by imprisonment in the
 12 state prison for not more than five years or in jail for not more
 13 than three years or by a fine of not more than five hundred dollars.

1 SECTION 48. A trustee under an express trust created by a — by trustee,
 2 deed, will or other instrument in writing, or a guardian, executor guardian, ad-
 3 or administrator, or any person upon or to whom such a trust has ministrator,
 4 devolved or come, who embezzles or fraudulently converts or ap- etc.
 5 propriates money, goods or property held or possessed by him for 1877, 231.
 6 the use or benefit, either wholly or partially, of some other person P. S. 203, § 46.
 7 or for a public or charitable purpose, to or for his own use or
 8 benefit or to or for the use or benefit of any person other than such
 9 person as aforesaid, or for any purpose other than such public or
 10 charitable purpose as aforesaid, or who otherwise fraudulently dis-
 11 poses of or destroys such property, shall be guilty of larceny, and
 12 shall be punished by imprisonment in the state prison for not more
 13 than ten years or by a fine of not more than two thousand dollars
 14 and imprisonment in jail for not more than two years.

1 SECTION 49. Whoever, being an officer, agent, clerk or servant — from volun-
 2 of a voluntary association or society, embezzles or fraudulently tary associa-
 3 converts, or fraudulently takes or secretes with intent so to do, tion.
 4 effects or property which belong to such association or society, 1884, 174.
 5 or which have come to his possession or are under his care by virtue
 6 of his office or employment, shall be guilty of simple larceny.

1 SECTION 50. Whoever embezzles or fraudulently converts, or Same subject.
 2 secretes with intent to embezzle or fraudulently convert, money, 1886, 328.
 3 goods or property or any part thereof which has been delivered to
 4 him, which may be the subject of larceny and which belong to
 5 any organization of the volunteer militia, post of the grand army
 6 of the republic, or other voluntary association, shall be guilty of
 7 simple larceny, although he is a member of such organization or
 8 voluntary association and, as such, entitled to an interest in the
 9 property thereof. In a prosecution under the provisions of this

section, it shall be sufficient to describe such organization or asso- 10
ciation by the name by which it is generally known and as a volun- 11
tary association. 12

Buying or re-
ceiving stolen
goods.

1698, s.
1723-4, 9.
1784, 66, § 9.
1804, 143, § 10.
R. S. 126, § 20.
1853, 184, § 1.
G. S. 161, §§ 43,
46.
1863, 248, § 3.
P. S. 203, §§ 48,
51, 61.
6 Met. 241.
7 Met. 460.
5 Gray, 82.

SECTION 51. Whoever buys, receives or aids in the conceal- 1
ment of stolen or embezzled property, knowing it to have been 2
stolen or embezzled, or whoever with intent to defraud buys, re- 3
ceives or aids in the concealment of property knowing it to have 4
been obtained from a person by a false pretence of carrying on 5
business and dealing in the ordinary course of trade, shall be 6
punished by imprisonment in the state prison for not more than five 7
years or by a fine of not more than five hundred dollars and im- 8
prisonment in jail for not more than two years. 9

117 Mass. 141.

120 Mass. 198.

121 Mass. 373.

136 Mass. 170.

Effect of resti-
tution of stolen
property

bought, etc.
1804, 143, § 13.
R. S. 126, § 21.
G. S. 161, § 44.
P. S. 203, § 49.

SECTION 52. If, upon a first conviction under the provisions of 1
the preceding section, it is shown that the act of stealing the prop- 2
erty was a simple larceny and if the convict makes restitution to 3
the person injured to the full value of the property stolen and 4
not restored, he shall not be imprisoned in the state prison. 5

Common re-
ceiver of stolen
goods.

1804, 143, § 12.
R. S. 126, § 22.
1853, 184, § 2.
G. S. 161, § 47.
P. S. 203, § 52.

SECTION 53. Whoever is convicted of buying, receiving or 1
aiding in the concealment of stolen or embezzled property, know- 2
ing it to have been stolen or embezzled, having been before con- 3
victed of the like offence, and whoever is convicted at the same 4
sitting of the court of three or more distinct acts of buying, receiv- 5
ing or aiding in the concealment of money, goods or property 6
stolen or embezzled as aforesaid, shall be adjudged a common re- 7
ceiver of stolen or embezzled goods and shall be punished by 8
imprisonment in the state prison for not more than ten years. 9

Unlawful
taking of
animal, etc.

C. L. 19, § 5.
1854, 215.
1856, 39, § 1.
G. S. 161, § 48.
P. S. 203, § 53.

SECTION 54. Whoever wilfully, mischievously and without right 1
takes or uses a boat or vehicle, or takes, drives, rides or uses a 2
horse, ass, mule, ox or any draught animal which is the property 3
of another, without the consent of the owner or other person who 4
has the legal custody, care or control thereof, shall be punished 5
by a fine of not more than three hundred dollars or by imprison- 6
ment for not more than six months; but the provisions of this 7
section shall not apply to the property of another which is taken 8
with intent to steal it, or if it is taken under a claim of right, or 9
with the presumed consent of the owner or other person who has 10
the legal control, care or custody thereof. 11

Fraudulent
hiring of horse,
etc.

1882, 236.

SECTION 55. Whoever hires a horse or carriage and, with intent 1
to cheat or defraud the owner thereof, makes to him or to his agent 2
at the time of such hiring a false statement of the distance which 3
he proposes to travel with such horse or carriage, or whoever, with 4
such intent, makes to the owner or his agent, after the use of a horse 5
or carriage, a false statement of the distance which he has actually 6
travelled with such horse or carriage, and whoever, with such 7
intent, refuses to pay for the use of a horse or carriage the lawful 8
hack or carriage fare established therefor by any city or town, shall 9
be punished by a fine of not more than twenty dollars or by im- 10

11 imprisonment for not more than two months, or by both such fine
12 and imprisonment.

1 SECTION 56. An officer, agent, clerk or servant of a corpora-
2 tion, or any other person, who issues or signs with intent to issue
3 a certificate of stock in a corporation, or who issues, signs or in-
4 dorses with intent to issue, a bond, note, bill or other obligation
5 or security in the name of such corporation, beyond the amount
6 authorized by law or limited by the legal votes of such corporation
7 or its proper officers, or negotiates, transfers or disposes of such
8 certificate with intent to defraud, shall be punished by imprison-
9 ment in the state prison for not more than ten years or in the
10 house of correction for not more than one year.

Unauthorized
issue of stock.
1856, 123, § 1.
1858, 114.
G. S. 161, § 49.
P. S. 203, § 54.

1 SECTION 57. An officer, agent, clerk or servant of a corpora-
2 tion, or any other person, who fraudulently issues or transfers a
3 certificate of the stock of a corporation to a person who is not
4 entitled thereto, or who fraudulently signs such certificate, in blank
5 or otherwise, with the intent that it shall be so issued or trans-
6 ferred by himself or any other person, shall be punished by impris-
7 onment in the state prison for not more than ten years or in the
8 house of correction for not more than one year.

Fraudulent
issue of stock,
etc.
1856, 123, § 2.
G. S. 161, § 50.
P. S. 203, § 55.

1 SECTION 58. An officer of a corporation or an agent, clerk or
2 servant of a person, firm or corporation, who makes a false entry
3 or omits to make a true entry in any book of such person, firm or
4 corporation, with intent to defraud, and any person whose duty it
5 is to make a record or entry of the transfer of stock, or of the
6 issuing or cancelling of certificates thereof, or of the amount of
7 stock issued by a corporation, in any book thereof, who, with in-
8 tent to defraud, omits to make a true record or entry thereof, shall
9 be punished by imprisonment in the state prison for not more than
10 ten years or in the house of correction for not more than one year.

False entry,
etc., in book
of corporation.
1856, 123, § 3.
G. S. 161, § 51.
P. S. 203, § 56.
1885, 223.

1 SECTION 59. Upon the trial of a person for a crime under the
2 provisions of the three preceding sections, the books of any person,
3 firm or corporation to which he had access or the right of access
4 shall be admissible in evidence.

Books of cor-
poration,
evidence.
1856, 123, § 4.
G. S. 161, § 52.
P. S. 203, § 57.

1 SECTION 60. Whoever, not being a member of the Military
2 Order of the Loyal Legion of the United States, of the Grand
3 Army of the Republic, of the Sons of Veterans, of the Woman's
4 Relief Corps, of the Union Veterans' Union, of the Union Veteran
5 Legion, of the Military and Naval Order of the Spanish-American
6 War or of the Legion of Spanish War Veterans, wilfully wears or
7 uses the insignia, distinctive ribbons or membership rosette or
8 button thereof for the purpose of representing that he is a member
9 thereof shall be punished by a fine of not more than twenty dollars
10 or by imprisonment for not more than thirty days, or by both such
11 fine and imprisonment.

Unlawful use
of insignia.
1887, 67.
1891, 15.
1894, 27, 117.
1901, 151.

1 SECTION 61. Whoever, with intent to defraud, by a false pre-
2 tence of carrying on business and dealing in the ordinary course of

Obtaining
goods under
false pretence

of carrying on
business, etc.
1833, 248, § 2.
P. S. 203, § 60.
108 Mass. 309.
153 Mass. 588.
157 Mass. 486.

trade, obtains from any person goods or chattels shall be punished 3
by imprisonment in the state prison for not more than five years 4
or by a fine of not more five hundred dollars and imprisonment in 5
jail for not more than two years. 6

Fraudulent
use of credit
of corporation.
1878, 274.
P. S. 203, § 62.

SECTION 62. An officer, agent, clerk or servant of a corpora- 1
tion which is organized or doing business in this commonwealth, 2
who wilfully uses the name of such corporation, or his own name 3
as such officer, agent, clerk or servant, to obtain money upon the 4
credit of such corporation for his own use or benefit, without au- 5
thority from such corporation, or who fraudulently lends, invests or 6
appropriates the money or disposes of the property of such corpora- 7
tion, or fraudulently converts it, shall be punished by imprisonment 8
in the state prison for not more than ten years. 9

Obtaining
property by
trick, etc.
1855, 135, § 1.
G. S. 161, § 57.
P. S. 203, § 65.
117 Mass. 112.
125 Mass. 384.
138 Mass. 484.

SECTION 63. Whoever, by a game, device, sleight of hand, pre- 1
tended fortune telling or by any trick or other means by the use 2
of cards or other implements or instruments, fraudulently obtains 3
from another person property of any description shall be punished 4
as in the case of larceny of property of like value. 5

Gross fraud,
etc., at com-
mon law.
1753, 21, § 4.
1815, 136, § 2.
R. S. 126, § 33.
G. S. 161, § 58.

SECTION 64. Whoever is convicted of any gross fraud or cheat 1
at common law shall be punished by imprisonment in the state 2
prison for not more than ten years or in jail for not more than 3
two years or by a fine of not more than four hundred dollars. 4

P. S. 203, § 66.

Sale of sterling
and coin silver.
1894, 292.

SECTION 65. Whoever makes or sells, or offers to sell or dis- 1
pose of, or has in his possession with intent to sell or dispose of, 2
any article of merchandise marked, stamped or branded with the 3
words "sterling", "sterling silver", "coin" or "coin silver", or 4
encased or enclosed in any box, package, cover or wrapper or other 5
thing in or by which the said article is packed, enclosed or other- 6
wise prepared for sale or disposition, having thereon any engraving 7
or printed label, stamp, imprint, mark or trade mark, indicating or 8
denoting by such marking, stamping, branding, engraving or print- 9
ing, that such article is silver, sterling silver, solid silver, coin or 10
coin silver, shall, unless nine hundred and twenty-five one-thou- 11
sandths of the component parts of the metal of which the said 12
article so marked, stamped or branded with the words "sterling" 13
or "sterling silver" is manufactured are pure silver, or unless nine 14
hundred one-thousandths of the component parts of the metal of 15
which the article so marked, stamped or branded with the words 16
"coin" or "coin silver" is manufactured, are pure silver, be pun- 17
ished by a fine of not more than one hundred dollars for each 18
offence. 19

Conveying en-
cumbrance land
without notice.
1855, 177, § 2.
G. S. 161, § 59.
P. S. 203, § 67.
15 Gray, 189.
127 Mass. 285,
287.

SECTION 66. Whoever conveys land, knowing that an encum- 1
brance exists thereon, without informing the grantee, before the 2
consideration is paid, of the existence and nature of such encum- 3
brance, so far as he has knowledge thereof, shall be punished by 4
imprisonment for not more than one year or by a fine of not more 5
than one thousand dollars. 6

1 SECTION 67. Whoever, knowing that his land is attached on
 2 mesne process, sells and conveys it without giving notice of the
 3 attachment to the grantee, and with intent to defraud, shall be pun-
 4 ished by imprisonment in the state prison for not more than three
 5 years or in jail for not more than one year.

Selling at-
 tached land
 without notice.
 R. S. 126, § 34.
 G. S. 161, § 60.
 P. S. 203, § 68.

1 SECTION 68. Whoever, with a fraudulent intent to place per-
 2 sonal property which is subject to a mortgage beyond the control
 3 of the mortgagee, removes or conceals or aids or abets in removing
 4 or concealing the same, and a mortgagor of such property who
 5 assents to such removal or concealment, shall be punished by a fine
 6 of not more than one thousand dollars or by imprisonment for not
 7 more than one year.

Concealing
 mortgaged
 personal prop-
 erty, etc.
 1859, 246.
 G. S. 161, § 61.
 P. S. 203, § 69.
 108 Mass. 12.
 112 Mass. 289.

1 SECTION 69. A mortgagor of personal property who sells or con-
 2 veys the same or any part thereof without the consent of the mort-
 3 gagee in writing, and without informing the vendee or grantee that
 4 the same is mortgaged, shall be punished by a fine of not more than
 5 one hundred dollars or by imprisonment for not more than one
 6 year.

Sale by mort-
 gagor without
 consent of
 mortgagee.
 1850, 284.
 G. S. 161, § 62.
 P. S. 203, § 70.
 § Allen, 518.

10 Allen, 81.

105 Mass. 580.

1 SECTION 70. A hirer or lessee of personal property who sells
 2 or conveys the same or any part thereof without the consent in
 3 writing of the owner or lessor, and without informing the vendee
 4 or grantee that it is so hired or leased, shall be punished by a fine
 5 of not more than one hundred dollars or by imprisonment for not
 6 more than one year.

—by hirer,
 etc., of person-
 alty without
 consent.
 1857, 156.
 G. S. 161, § 63.
 P. S. 203, § 71.

1 SECTION 71. Whoever, holding collateral security deposited
 2 with him for the payment of a debt which may be due to him,
 3 sells, pledges, lends or in any way disposes of the same before
 4 such debt becomes due and payable, without the authority of the
 5 depositor thereof, shall be punished by a fine of not more than five
 6 hundred dollars or by imprisonment in jail for not more than two
 7 years.

Sale, etc., of
 collateral
 security before
 debt due, etc.
 1855, 213.
 G. S. 161, § 64.
 P. S. 203, § 72.
 100 Mass. 1.
 118 Mass. 431.

1 SECTION 72. Whoever, with intent to defraud, buys, receives
 2 or aids in concealing personal property, knowing it to be hired or
 3 leased or held as collateral security, shall be punished by a fine of
 4 not more than one hundred dollars or by imprisonment for not
 5 more than one year.

Buying, etc.,
 hired property,
 etc.
 1865, 127, § 1.
 P. S. 203, § 73.

1 SECTION 73. Whoever, being in possession of personal property
 2 received upon a written and conditional contract of sale, with in-
 3 tent to defraud, sells, conveys, conceals or aids in concealing the
 4 same before performance of the conditions precedent to acquiring
 5 the title thereto, shall be punished by a fine of not more than one
 6 hundred dollars or by imprisonment for not more than one year.

Sale of person-
 alty held on
 conditional
 sale.
 1870, 261.
 P. S. 203, § 74.
 150 Mass. 67.

1 SECTION 74. A consignee or factor who, in violation of good
 2 faith and with intent to defraud the owners thereof, deposits or
 3 pledges, as security for money borrowed by him, a negotiable in-
 4 strument received by him, merchandise consigned or intrusted to
 5 him, or a bill of lading, certificate or order for the delivery of

Consignee,
 etc., fraudu-
 lently deposit-
 ing or pledging
 property, etc.
 1849, 216, § 6.
 G. S. 161, § 65.
 P. S. 203, § 75.

merchandise ; or who, in like violation and with like intent, disposes of or applies such property or evidence of property to his own use : or who, in like violation and with like intent, disposes of or applies to his own use money which has been raised or a negotiable instrument which has been acquired by the sale or other disposition of such property or evidence of property, shall be punished by a fine of not more than five thousand dollars and imprisonment for not more than five years.

Falsely pre-
tending to hold
a degree, etc.,
or granting
degrees with-
out authority.
1893, 355, § 1.

SECTION 75. Whoever, in a book, pamphlet, circular, advertisement or advertising sign, or by a pretended written certificate or diploma, or otherwise in writing, knowingly and falsely pretends to have been an officer or teacher, or to be a graduate or to hold any degree of a college or other educational institution of this commonwealth or elsewhere, which is authorized to grant degrees, or of a public school of this commonwealth, and whoever, without the authority of a special act of the general court granting the power to give degrees, offers or grants degrees as a school, college or as a private individual, alone or associated with others, shall be punished by a fine of not more than one thousand dollars or by imprisonment for not more than one year, or by both such fine and imprisonment.

Falsely claim-
ing indorse-
ment.
1893, 355, § 2.

SECTION 76. Whoever, in a book, pamphlet, circular, advertisement or advertising sign, or otherwise in writing, makes any false and fraudulent statement or assertion of indorsement, authority, approval or sanction of an incorporated college, university or professional school in this commonwealth or elsewhere, or of officers or instructors thereof, as a commendation or advertisement of a person or of his services, or of goods, wares, commodities, processes or treatment, shall be punished by a fine of not more than one thousand dollars or by imprisonment for not more than one year, or by both such fine and imprisonment.

Obtaining or
giving a false
pedigree of
animals.
1887, 143.
1890, 334, § 2.

SECTION 77. Whoever, by a false pretence, obtains from any club, association, society or company for improving the breed of cattle, horses, sheep, swine or other domestic animals, the registration, or a certificate thereof, of any animal in the herd register, or any other register of such club, association, society or company, or a transfer of such registration, or whoever knowingly makes, exhibits or gives a false pedigree in writing of any animal, shall be punished by imprisonment for not more than two years or by a fine of not more than five hundred dollars, or by both such fine and imprisonment.

Malevolent
destruction of
boundary
monument,
mile stone, etc.
1785, 28, § 2.
1823, 113, § 1.
R. S. 126, § 43.
G. S. 161, § 64.
P. S. 203, § 76.
1901, 268, § 2.

SECTION 78. Whoever wilfully, intentionally and without right breaks down, injures, removes or destroys a monument which has been erected for the purpose of designating the boundaries of a city or town or of a tract or lot of land, or a tree which has been marked for that purpose, or so breaks down, injures, removes or destroys a mile stone, mile board or guide board which has been erected upon a public way or railroad, or wilfully, intentionally and without right defaces or alters the inscription on any such stone or board, or wilfully, intentionally and without right mars or defaces a building or sign board, or extinguishes a lamp, or breaks, destroys

11 or removes a lamp, lamp post, railing or post which has been erected
 12 on a bridge, sidewalk, public way, court or passage, shall be pun-
 13 ished by imprisonment for not more than six months or by a fine of
 14 not more than fifty dollars.

1 SECTION 79. Whoever wilfully or maliciously removes, dis-
 2 places, destroys, defaces, mars or injures any monument, tablet or
 3 other device which has been erected to mark an historic place or to
 4 commemorate an historic event shall be punished by a fine of not
 5 more than one hundred dollars or by imprisonment for not more
 6 than one year.

Malicious
destruction
of historical
monument.
1899, 358.

1 SECTION 80. Whoever wilfully, intentionally and without right
 2 defaces, mars or injures the walls, wainscoting or any other part of
 3 the state house or of any other building which belongs to the com-
 4 monwealth, or the appurtenances thereof, by cutting, writing or
 5 otherwise, shall be punished by a fine of not less than five nor more
 6 than one hundred dollars.

Defacing, etc.,
building of the
common-
wealth.
1833, 178.
R. S. 11, § 8.
G. S. 5, § 14.
P. S. 203, § 77.
1901, 268, § 3.

1 SECTION 81. Whoever wilfully mars or injures the walls, wain-
 2 scoting or any other part of a court house, or of any other building
 3 or room used for county business, or the appurtenances thereof, by
 4 cutting, writing or otherwise, shall be punished by imprisonment
 5 for not more than sixty days or by a fine of not more than fifty
 6 dollars.

— building
of county.
1899, 196, § 1.

1 SECTION 82. Whoever wilfully, intentionally and without right,
 2 or wantonly and without cause, destroys, defaces, mars or injures a
 3 school house, church or other building which has been erected or used
 4 for purposes of education or religious instruction, or for the general
 5 diffusion of knowledge, or an out-building, fence, well or appurte-
 6 nance of such school house, church or other building, or furniture,
 7 apparatus or other property which belongs to or is connected with
 8 such school house, church or other building, shall be punished by
 9 a fine of not more than five hundred dollars or by imprisonment
 10 for not more than one year.

Wilful injury,
etc., to school
house, church,
etc., or furni-
ture, etc.
1857, 222.
G. S. 161, § 67.
P. S. 203, § 78.
1901, 268, § 4.
2 Allen, 159.

1 SECTION 83. Whoever wilfully, intentionally and without right,
 2 or wantonly and without cause, writes upon, injures, defaces, tears
 3 or destroys a book, plate, picture, engraving, map, newspaper,
 4 magazine, pamphlet, manuscript or statue which belongs to a law,
 5 city, town or other public or incorporated library shall be pun-
 6 ished by a fine of not less than five nor more than fifty dollars or
 7 by imprisonment for not more than six months.

Defacement of
books, etc., of
libraries.
1867, 69.
1872, 42.
P. S. 203, § 79.
1883, 81.
1901, 268, § 4.

1 SECTION 84. Whoever wilfully, intentionally and without right,
 2 or wantonly and without cause, detains a book, newspaper, maga-
 3 zine, pamphlet, or manuscript which belongs to a law, city, town
 4 or other public or incorporated library for thirty days after a
 5 notice in writing from the librarian thereof, containing a copy of
 6 this section and given after the expiration of the time which, by the
 7 regulations of such library, such book, newspaper, magazine, pam-
 8 phlet or manuscript may be kept, shall be punished by a fine of
 9 not less than one nor more than twenty-five dollars or by imprison-
 10 ment for not more than six months.

Detention of
books of
libraries.
1883, 77.
1901, 268, § 4.

Malicious
explosion.
1851, 129, § 1.
G. S. 161, § 68.
P. S. 203, § 80.
1901, 268, § 4.

SECTION 85. Whoever wilfully, intentionally and without right, by the explosion of gunpowder or of any other explosive, unlawfully destroys or injures a dwelling house, office, shop or other building, or a ship or vessel, shall be punished by imprisonment in the state prison for not more than twenty years or in jail for not more than five years or by a fine of not more than one thousand dollars.

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Throwing ex-
plosives into
dwelling, etc.
1851, 129, § 2.
G. S. 161, § 69.
P. S. 203, § 81.
1901, 268, § 4.

SECTION 86. Whoever wilfully, intentionally and without right throws into, against or upon, or puts, places or explodes or causes to be exploded in, upon or near a dwelling house, office, shop, building or vessel gunpowder or other explosive, or a bomb shell, torpedo or other instrument filled or loaded with an explosive, with intent unlawfully to destroy or injure such dwelling house, office, shop, building or vessel, or any person or property therein, shall be punished by imprisonment in the state prison for not more than ten years or in jail for not more than five years or by a fine of not more than five hundred dollars.

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— oil of vitriol,
coal tar, etc.
1851, 129, § 3.
G. S. 161, § 70.
P. S. 203, § 82.
1901, 268, § 4.

SECTION 87. Whoever wilfully, intentionally and without right throws into, against or upon a dwelling house, office, shop or other building, or into, against or upon a vessel, or puts or places therein or thereon oil of vitriol, coal tar or other noxious or filthy substance, with intent unlawfully to injure, deface or defile such dwelling house, office, shop, building or vessel, or any property therein, shall be punished by imprisonment in the state prison for not more than five years or in jail for not more than three years or by a fine of not more than three hundred dollars.

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Injury to
building.
1862, 160.
P. S. 203, § 83.
1901, 268, § 5.
110 Mass. 401.

SECTION 88. Whoever wilfully, intentionally and without right destroys, injures, defaces or mars a dwelling house or other building, whether upon the inside or outside, shall be punished by imprisonment for not more than sixty days or by a fine of not more than fifty dollars.

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Raising water
so as to injure
mill.
1849, 98.
G. S. 161, § 71.
P. S. 203, § 84.

SECTION 89. Whoever, by erecting or maintaining a dam, either within or without this commonwealth, knowingly causes the water of a river or stream so to be raised as to flow upon or injure a mill lawfully existing in this commonwealth and belonging to a citizen thereof, without right as against the owner of such mill, shall be punished by a fine of not more than one thousand dollars or by imprisonment for not more than six months; but the provisions of this section shall not apply to cases in which the courts of this commonwealth have jurisdiction to abate a dam so raised or maintained.

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Injury to dam,
reservoir, etc.
1727-S, 3.
1829, 98.
R. S. 126, § 40.
1857, 160.
G. S. 161, § 72.
1875, 101.
P. S. 203, § 85.
1901, 268, § 4.

SECTION 90. Whoever wilfully, intentionally and without right breaks down, injures, removes or destroys a dam, reservoir, canal or trench or a gate, flume, flash boards or other appurtenances thereof, or a wheel, or mill gear, or machinery of a water mill or steam mill, or wilfully or wantonly, without color of right, draws off the water contained in a mill pond, reservoir, canal or trench, or obstructs such water from flowing out of the same, shall be punished by imprisonment in the state prison for not more than five

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9 years or by a fine of not more than five hundred dollars and im-
10 prisonment in jail for not more than two years.

1 SECTION 91. Whoever wilfully and without right pulls down Pulling down
2 or removes any portion of a stone wall or fence which is erected stone walls.
3 or maintained for the purpose of enclosing land shall be punished 1901, 298.
4 by a fine of not more than ten dollars.

1 SECTION 92. Whoever wilfully, intentionally and without right Injury, etc.,
2 or license, cuts, injures, mars or otherwise damages or destroys ice to ice taken as
3 upon waters from which ice is or may be taken as an article of merchandise.
4 merchandise, whereby the taking thereof is hindered or the value 1850, 114.
5 thereof diminished for that purpose, shall be punished by a fine of G. S. 161, § 73.
6 not more than one hundred dollars. P. S. 203, § 86.
1901, 268, § 6.

1 SECTION 93. Whoever wilfully, intentionally and without right — to bridge,
2 breaks down, injures, removes or destroys a public bridge, or a etc.
3 lock, culvert or embankment of a canal, or wilfully, intentionally R. S. 126, § 41.
4 and without right makes an aperture or breach in such embankment G. S. 161, § 74.
5 with intent to destroy or injure the same, shall be punished by P. S. 203, § 87.
6 imprisonment in the state prison for not more than five years or by 1901, 268, § 1.
7 a fine of not more than five hundred dollars and imprisonment in
8 jail for not more than two years.

1 SECTION 94. Whoever casts away, burns, sinks or otherwise Destroying
2 destroys a ship or vessel, with intent to injure or defraud an owner vessel to de-
3 thereof, or of any property laden on board the same, or an insurer fraud owner
4 of such ship, vessel or property, or of any part thereof, shall be or insurer.
5 punished by imprisonment in the state prison for not more than ten 1802, 136, § 1.
6 years. 1824, 137, § 1.
R. S. 126, § 35.
G. S. 161, § 76.
P. S. 203, § 89.

1 SECTION 95. Whoever lades, equips or fits out, or assists in Fitting out
2 lading, equipping or fitting out, a ship or vessel, with intent that vessel with in-
3 it shall be wilfully cast away, burnt, sunk or otherwise destroyed tent to destroy
4 and with intent to injure or defraud an owner or insurer of such it, etc.
5 ship or vessel, or of any property laden on board the same, shall 1802, 136, § 2.
6 be punished by imprisonment in the state prison for not more than 1824, 137, § 2.
7 twenty years or by a fine of not more than five thousand dollars R. S. 126, § 36.
8 and imprisonment in jail for not more than three years. G. S. 161, § 77.
P. S. 203, § 90.

1 SECTION 96. An owner of a ship or vessel, or of property laden False invoice,
2 or pretended to be laden on board the same, or any other person etc., of cargo
3 concerned in the lading or fitting out of a ship or vessel, who to defraud
4 makes out or exhibits, or causes to be made out or exhibited, a false insurer, etc.
5 or fraudulent invoice, bill of lading, bill of parcels or other false 1802, 136, § 3.
6 estimates of any goods or property laden or pretended to be laden R. S. 126, § 37.
7 on board such ship or vessel, with intent to injure or defraud G. S. 161, § 78.
8 insurer of such ship, vessel or property or of any part thereof, shall P. S. 203, § 91.
9 be punished by imprisonment in the state prison for not more than
10 ten years or by a fine of not more than five thousand dollars and
11 imprisonment in jail for not more than two years.

1 SECTION 97. A master, officer or mariner of a ship or vessel — protest, etc.
2 who makes or causes to be made or swears to a false affidavit or 1802, 136, § 4.
R. S. 126, § 38.

G. S. 161, § 79.
P. S. 203, § 92.

protest, or an owner of or other person concerned in such ship or vessel, or the owner of or the person concerned in the goods or property laden on board the same, who procures such false affidavit or protest to be made, or exhibits the same, with intent to injure, deceive or defraud an insurer of such ship or vessel, or of any goods or property laden on board the same, shall be punished by imprisonment in the state prison for not more than ten years or by a fine of not more than five thousand dollars and imprisonment in jail for not more than two years.

Malicious
killing or
poisoning of
cattle.

1804, 131, § 4.
R. S. 126, § 39.
G. S. 161, § 80.
P. S. 203, § 93.
1 Mass. 59.
3 Cush. 558.
9 Gray, 299, 304.
105 Mass. 469.

SECTION 98. Whoever wilfully and maliciously kills, maims or disfigures any horse, cattle or other beast of another person, or wilfully and maliciously administers or exposes poison with intent that it shall be taken or swallowed by any such beast, shall be punished by imprisonment in the state prison for not more than five years or by a fine of not more than one thousand dollars and imprisonment in jail for not more than one year.

Cutting timber,
wood, grain,
etc.

1638, 7, §§ 1, 2.
1723-4, 10, §§ 1, 2.
1726-7, 3, §§ 1, 2.
1727, 8.
1785, 28, § 1.
1818, 3, §§ 2, 4.
R. S. 126, §§ 44,
45.
G. S. 161, §§ 81,
84.
1868, 321.
P. S. 203, §§ 94,
97.
141 Mass. 241.

SECTION 99. Whoever wilfully cuts down or destroys timber or wood standing or growing on the land of another, or carries away any kind of timber or wood cut down or lying on such land, or digs up or carries away stone, ore, gravel, clay, sand, turf or mould from such land, or roots, fruit or any plant there being, or cuts down or carries away sedge, grass, hay or any kind of corn, standing, growing or being on such land, or carries away from a wharf or landing place any goods in which he has no interest or property, without the license of the owner thereof, shall be punished by imprisonment for not more than six months or by a fine of not more than five hundred dollars, and if the offence is committed on the Lord's day or in disguise or secretly in the night time the imprisonment shall not be less than five days nor the fine less than five dollars.

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Malicious
injuries to
trees, fences,
etc.

1638, 7, § 1.
1785, 28, § 1.
1829, 63.
R. S. 126, § 42.
G. S. 161, § 82.
1868, 321.
P. S. 203, § 95.
11 Cush. 414.
127 Mass. 1.

SECTION 100. Whoever wilfully and maliciously cuts down, destroys or injures a tree which is not his own, standing for any useful purpose, or whoever wilfully and maliciously breaks glass in a building which is not his own, or whoever wilfully and maliciously breaks down, injures, mars or defaces a fence belonging to or enclosing land which is not his own, or wilfully and maliciously throws down or opens a gate, bars or fence, and leaves the same down or open, or maliciously and injuriously severs from the freehold of another any produce thereof or anything attached thereto, shall be punished by imprisonment for not more than six months or by a fine of not more than five hundred dollars.

Injury to
plants or
objects of
ornament or
utility.

1856, 256, § 2.
G. S. 46, § 7.
P. S. 54, § 7.

SECTION 101. Whoever (wilfully and maliciously injures) defaces or destroys a shrub or plant or an object or fixture of ornament or utility in a public way or place or in any enclosure shall forfeit not less than five nor more than one hundred dollars, one-half to the use of the complainant and one-half to the use of the owner of the property injured, defaced or destroyed.

— to a shade
tree in a public
place.
1899, 330, §§ 6, 7.

SECTION 102. Whoever wilfully and maliciously injures, defaces or destroys an ornamental or shade tree in a public way or place, or

or voluntarily 1902 c. 544 § 31, 32

voluntarily 1902 c. 544 § 31, 32

3 negligently or wilfully suffers an animal, driven by or for him or
 4 belonging to him and lawfully in a public way or place, to injure,
 5 deface or destroy such tree, or whoever, by any other means, neg-
 6 ligently or wilfully injures, defaces or destroys such tree, shall
 7 forfeit not less than five nor more than one hundred dollars, one-
 8 half to the use of the complainant and one-half to the use of the
 9 city or town in which said act is committed; and shall in addition
 10 thereto be liable to said city or town or other person interested in
 11 said tree for all damages caused by such act.

1 SECTION 103. Whoever negligently or wilfully suffers an ani-
 2 mal, driven by or for him or belonging to him and lawfully on the
 3 highway, to injure, deface or destroy a tree which is not his own,
 4 standing for use or ornament on the highway, or whoever, by any
 5 other means, negligently or wilfully injures, defaces or destroys
 6 such tree, shall forfeit not less than five nor more than one hundred
 7 dollars, one-half to the use of the complainant and one-half to the
 8 use of the city or town in which said act is committed; and shall
 9 in addition thereto be liable in damages to the owners or tenant of
 10 the land in front of which the tree stands.

Injury to
 shade tree in
 highway.
 1859, 261.
 G. S. 46, § 8.
 P. S. 54, § 8.
 1899, 436.

1 SECTION 104. Whoever affixes to a tree in a public way or place
 2 a playbill, picture, announcement, notice, advertisement or other
 3 thing, whether in writing or otherwise, or cuts, paints or marks
 4 such tree, except for the purpose of protecting it and under a
 5 written permit from the officer having the charge of such trees in
 6 a city or from the tree warden in a town, shall be punished by a
 7 fine of not more than fifty dollars for each offence. The tree
 8 warden shall enforce the provisions of this and the preceding two
 9 sections in towns.

Affixing
 notices to
 trees.
 1893, 403.
 1899, 330, §§ 5, 8.

1 SECTION 105. Whoever wilfully and maliciously enters an
 2 orchard, nursery, garden or cranberry meadow, and takes away,
 3 mutilates or destroys a tree, shrub or vine or steals, takes and
 4 carries away any fruit or flower, without the consent of the owner
 5 thereof, shall be punished by a fine of not more than five hundred
 6 dollars or by imprisonment for not more than six months.

Trespass in
 orchard, gar-
 den, etc.
 C. L. 13, § 1.
 1698, 7, § 1.
 1855, 457.
 G. S. 161, § 83.
 1868, 321.
 P. S. 203, § 96.
 6 Gray, 349.

1 SECTION 106. Whoever wilfully and maliciously, and without
 2 permission of the owner or person having control thereof, enters
 3 upon the orchard, garden or other improved land of another, with
 4 intent to cut, take, carry away, destroy or injure the trees, grain,
 5 grass, hay, fruit or vegetables there growing or being, shall be
 6 punished by imprisonment for not more than six months or by a
 7 fine of not more than five hundred dollars; and if the offence is
 8 committed on the Lord's day, or in disguise, or secretly in the
 9 night time, the imprisonment shall not be less than five days nor
 10 the fine less than five dollars.

— by entering
 orchard, etc.,
 with intent, etc.
 1818, 3, §§ 1, 4.
 R. S. 126, § 45.
 G. S. 161, § 84.
 1868, 321.
 P. S. 203, § 97.

1 SECTION 107. Whoever, having the charge or custody of sheep,
 2 goats, cattle, horses, swine or fowl, wilfully suffers or permits
 3 them to enter on, pass over or remain on any orchard, garden,
 4 mowing land or other improved or enclosed land of another, after
 5 being forbidden in writing or by notice posted thereon by the

Suffering
 animals to
 trespass on
 land.
 1878, 168.
 1879, 70.
 P. S. 203, § 98.

owner or occupant thereof, or by the authorized agent of such owner or occupant, shall be punished by a fine of not more than ten dollars.

Transportation of injurious insects.
1890, 95, § 7.
1891, 210, § 7.
1898, 544, § 3.

SECTION 108. Whoever knowingly brings the insects which are known as the oceria dispar or gypsy moth or as the brown-tail moth, or their nests or eggs, into this commonwealth, or whoever knowingly transports said insects or their eggs or nests from one city or town to another city or town in the commonwealth, except when engaged in, and for the purpose of, destroying them shall be punished by a fine of not more than two hundred dollars or by imprisonment for not more than sixty days, or by both such fine and imprisonment.

Trespass on improved or enclosed land.
1862, 89.
1876, 181.
P. S. 203, §§ 99, 100.
1890, 410.
162 Mass. 584.
164 Mass. 495.

SECTION 109. Whoever, without right, enters or remains in or upon the dwelling house, buildings or improved or enclosed land of another, after having been forbidden so to do by the person who has the lawful control of said premises, either directly or by notice posted thereon, shall be punished by a fine of not more than twenty dollars. A person who is found committing such trespass may be arrested by a sheriff, deputy sheriff, constable, watchman or police officer and kept in custody in a convenient place, not more than twenty-four hours, Sunday excepted, until a complaint can be made against him for the offence, and he be taken upon a warrant issued upon such complaint.

Entry on land with firearms.
1890, 403, § 1.

SECTION 110. Whoever, without right, enters upon the land of another with firearms, with intent to fire or discharge them thereon, and, having been requested by the owner or occupant of such land or by his agent to leave such land, remains thereon, shall be punished by a fine of not more than two hundred dollars or by imprisonment for not more than two months, or by both such fine and imprisonment.

Defacement of notice against trespassers.
1890, 403, § 2.

SECTION 111. Whoever wilfully tears down, removes or defaces any notice posted on land by the owner, lessee or custodian thereof, warning persons not to trespass thereon, shall be punished by a fine of not more than twenty-five dollars.

Trespass on land appurtenant to prison, etc.
1885, 303.

SECTION 112. Whoever wilfully trespasses upon land which belongs to the commonwealth and is appurtenant to the state prison, Massachusetts reformatory or reformatory prison for women, or upon land which belongs to any county and is appurtenant to a jail or house of correction, or, after notice from an officer of any of said institutions to leave said land, remains thereon, shall be punished by imprisonment for not more than three months or by a fine of not more than fifty dollars.

Malicious injury to legal notice.
1883, 156.

SECTION 113. Whoever wilfully and maliciously, or wantonly and without cause, tears down, removes or defaces a warrant for a town meeting, list of jurors or other notice or paper which has been posted in compliance with law shall, except as otherwise provided, be punished by a fine of not more than ten dollars.

1 SECTION 114. Whoever wilfully and maliciously removes, de-
 2 stroys or mutilates a show bill, placard, programme or other adver-
 3 tisement posted upon a wall, fence, bill board or structure not
 4 lawfully under his control, of an exhibition, show or amusement
 5 licensed under the provisions of section one hundred and seventy-
 6 two of chapter one hundred and two, before such exhibition, show
 7 or amusement has taken place, shall be punished by a fine of not
 8 more than ten dollars.

Malicious
injury to show
bill.
1870, 259.
P. S. 203, § 101.

1 SECTION 115. Whoever paints, or puts upon, or in any man-
 2 ner affixes to, any fence, structure, pole, rock or other object which
 3 is the property of another, whether within or without the limits of
 4 the highway, any words, device, trade mark, advertisement or no-
 5 tice which is not required by law to be posted thereon, without
 6 first obtaining the written consent of the owner or tenant of such
 7 property, shall, upon complaint of such owner, or of his tenant,
 8 or of any municipal or public officer, be punished by a fine of not
 9 more than ten dollars. Any word, device, trade mark, advertise-
 10 ment or notice which has been painted, put up or affixed within the
 11 limits of a highway in violation of the provisions of this section
 12 shall be considered a public nuisance, and may be forthwith removed
 13 or obliterated and abated by any person.

Defacing natu-
ral scenery.
1873, 349.
P. S. 203, § 102.
1898, 500.

1 SECTION 116. Whoever wilfully and maliciously destroys or
 2 injures the personal property of another in any manner or by any
 3 means not particularly described or mentioned in this chapter shall
 4 be punished by imprisonment in the state prison for not more than
 5 five years or by a fine of not more than one thousand dollars and
 6 imprisonment in jail for not more than one year; but if the value
 7 of the property so destroyed or injured is not alleged to exceed
 8 fifteen dollars, the punishment shall be by a fine of not more than
 9 fifteen dollars or by imprisonment for not more than thirty days.

Malicious
injuries to
personal prop-
erty.
R. S. 126, § 39.
1846, 52, § 1.
G. S. 161, § 85.
P. S. 203, § 103.
2 Met. 21.
3 Cush. 558.
6 Gray, 349.
7 Allen, 577.
107 Mass. 218.
108 Mass. 304.

1 SECTION 117. Whoever, without the consent of the owner
 2 thereof, knowingly and wilfully effaces, alters or covers over, or
 3 procures to be effaced, altered or covered over the name, initial
 4 or device of any dealer in milk, marked or stamped upon a milk
 5 can, or whoever, with intent to defraud and without such consent,
 6 detains or uses in his business any such can having the name, initial
 7 or device of any dealer in milk so marked or stamped thereon, shall
 8 be punished by a fine of not more than ten dollars.

Defacing milk
cans.
1885, 133.

1 SECTION 118. Whoever, without the consent of any owner who
 2 has complied with the provisions of section nineteen of chapter
 3 seventy-two, wilfully destroys, mutilates or defaces any can, jug,
 4 bottle or jar bearing such owner's name, mark or device, or wilfully
 5 erases, mars, covers or changes any word or mark branded, en-
 6 graved, blown or otherwise produced, in a permanent manner in
 7 or upon any such can, jug, bottle or jar, shall, for the first offence,
 8 be punished by a fine of not more than five dollars or by imprison-
 9 ment for not more than sixty days, for each can, jug, bottle or
 10 jar so destroyed, mutilated or defaced, or for each can, jug, bottle
 11 or jar upon which any word or mark has been erased, marred,
 12 covered or changed, as aforesaid; and, for any subsequent offence,

— registered
milk cans.
1900, 359, § 3.

by a fine of not more than ten dollars, or by imprisonment for not more than six months, for each can, jug, bottle or jar so destroyed, mutilated or defaced, or for each can, jug, bottle or jar upon which any word or mark has been erased, marred, covered or changed, as aforesaid.

Injury of prop-
erty at state
prison.
1891, 245.
1896, 344.

SECTION 119. If a convict in the state prison wilfully and maliciously destroys or injures the property of the commonwealth at such prison or the property of any person who furnishes materials for the employment of the prisoners, he may be punished by imprisonment in the state prison for not more than three years; or if he is serving a sentence of imprisonment for life, he may be punished by imprisonment at solitary labor for not more than one year or by solitary imprisonment for not more than five days, or by both, and such punishment shall be inflicted at such time as the court orders.

— at other
penal institu-
tions.
1896, 344.

SECTION 120. If a convict at the Massachusetts reformatory, at the reformatory prison for women, at the state farm, at any jail or house of correction wilfully and maliciously injures or destroys the property of the commonwealth, or of any county, or the property of any person who furnishes materials for the employment of the prisoners in any of said institutions, he may be punished by imprisonment for not less than six months nor more than three years.

Arrest without
warrant of
trespasser on
Lord's day.
1851, 246.
1852, 245.
G. S. 161, § 86.
P. S. 203, § 104.

SECTION 121. Whoever is discovered in the act of wilfully injuring a fruit or forest tree or of committing any kind of malicious mischief on the Lord's day may be arrested without a warrant by a sheriff, deputy sheriff, constable, watchman, police officer or other person, and detained in jail or otherwise until a complaint can be made against him for the offence, and he be taken upon a warrant issued upon such complaint: but such detention without warrant shall not continue more than twenty-four hours.

Killing or
frightening
pigeons.
1848, 85.
1849, 29.
G. S. 161, § 87.
P. S. 203, § 105.

SECTION 122. Whoever wilfully kills pigeons upon, or frightens them from, beds which have been made for the purpose of taking them in nets, by firing guns, or by any other method, within one hundred rods of the same, except on land lawfully occupied by himself, shall be punished by imprisonment for not more than thirty days or by a fine of not more than twenty dollars; and shall also be liable for the actual damages to the owner or occupant of such beds.

Injury, etc., to
property of
Humane
Society.
1854, 358.
G. S. 161, § 88.
P. S. 203, § 106.
1889, 339.

SECTION 123. Whoever unlawfully enters a house or hut which is the property of the Humane Society of the Commonwealth of Massachusetts and wilfully injures, destroys, removes or carries away any food, fuel, oil, candles, furniture, utensils or other property which belongs to said society, or unlawfully or wilfully enters any boat house of said society and carries away, removes or injures any life boat, car, or any of the ropes, tackle, oars or any appurtenance thereof, or wilfully injures or destroys or unlawfully uses or commits any trespass upon, the property of said society which is intended or kept for the purpose of saving or preserving human life, or commits any trespass upon such hut or boat house, shall be punished by a fine of not more than two hundred dollars or

13 by imprisonment for not more than six months; but the penalties
14 of this section shall not apply to persons for whose use said boats,
15 houses and other property are intended and kept. Pilots, com-
16 missioners of wrecks, sheriffs and their deputies, and constables,
17 shall make complaint against all persons guilty of a violation of
18 the provisions of this section. One-half of any fine paid under
19 the provisions of this section shall be paid to the person who gives
20 information upon which a conviction shall be obtained.

1 SECTION 124. Whoever, between the first day of April and the
2 first day of October, sets fire to a coal pit or pile of wood, for the
3 purpose of charring the same, on any woodland in the cities of New
4 Bedford or Fall River or in the towns of Dartmouth, Freetown,
5 Fairhaven, Middleborough or Rochester, shall forfeit one hundred
6 dollars. Whoever, between the times aforesaid, sets fire to any
7 brushwood or bushes on any part of such woodland, or on land
8 adjoining thereto, so as to cause the burning of such brushwood or
9 bushes, shall forfeit fifty dollars. All forfeitures under the pro-
10 visions of this section shall be equally divided between the city or
11 town in which the offence is committed and the person who sues
12 therefor.

Setting fire to
coal pit on
woodland in
New Bedford,
etc., between
March and
October.
1839, 148.
G. S. 161, §§ 89-
91.
P. S. 203, §§ 107-
109.

1 SECTION 125. Whoever moors or in any manner makes fast a
2 vessel, scow, boat or raft to a buoy, beacon or floating guide placed
3 by the government of the United States in the navigable waters
4 of this commonwealth shall be punished by a fine of not more
5 than fifty dollars; and whoever wilfully destroys, injures or re-
6 moves any such beacon or guide shall be punished by a fine of not
7 more than one hundred dollars or by imprisonment for not more
8 than three months. One-third of all fines which accrue under the
9 provisions of this section shall be paid to the complainant and two-
10 thirds to the county.

Mooring
vessel, etc.,
to a buoy, etc.
1860, 53, §§ 1, 2.
P. S. 203, §§ 110,
111.

1 SECTION 126. A baggage master, express agent, stage driver,
2 hackman or other person, whose duty it is to handle, remove or
3 take care of the baggage of passengers, who wilfully or recklessly
4 destroys or injures a trunk, valise, box, package or parcel, while
5 loading, transporting, unloading, delivering or storing the same,
6 shall be punished by a fine of not more than fifty dollars.

Injury, etc., to
baggage by
hackman, etc.
1869, 307.
P. S. 203, § 112.

CHAPTER 209.

OF FORGERY, AND CRIMES AGAINST THE CURRENCY.

1 SECTION 1. Whoever, with intent to injure or defraud, falsely
2 makes, alters, forges or counterfeits a public record, or a certificate,
3 return or attestation of a clerk or register of a court, public regis-
4 ter, notary public, justice of the peace, town clerk or any other
5 public officer, in relation to a matter wherein such certificate, re-
6 turn or attestation may be received as legal proof; or a charter,
7 deed, will, testament, bond or writing obligatory, letter of at-
8 torney, policy of insurance, bill of lading, bill of exchange or

Forgery of
record, con-
tract, etc.
C. L. 54, § 3.
1692-3, 18, § 8.
1784, 67.
1785, 21, § 3.
1804, 120, § 1.
1805, 88, § 1.
R. S. 127, § 1.
G. S. 162, § 1.
1874, 78.
P. S. 204, § 1.
1898, 562, § 113.

1901, 371, § 1.
3 Cush. 150.
3 Gray, 441.
2 Allen, 161.
101 Mass. 32.
114 Mass. 278,
311.
120 Mass. 358.
124 Mass. 327.
129 Mass. 124.
148 Mass. 296.
157 Mass. 386.

promissory note; or an order, acquittance or discharge for money 9
or other property; or an acceptance of a bill of exchange, or an 10
indorsement or assignment of a bill of exchange or promissory 11
note for the payment of money; or an accountable receipt for 12
money, goods or other property; or a certificate of stock, or any 13
evidence or muniment of title to property; or a certificate of title, 14
duplicate certificate of title, certificate issued in place of a duplicate 15
certificate, the registration book, entry book, or any indexes pro- 16
vided for by chapter one hundred and twenty-eight, or the docket 17
of the recorder; shall be punished by imprisonment in the state 18
prison for not more than ten years or in jail for not more than two 19
years. Whoever, with intent to injure or defraud, falsely makes, 20
alters, forges or counterfeits a railroad ticket, railroad mileage book 21
or railroad pass shall be punished by imprisonment in the state 22
prison for not more than three years or in jail for not more than 23
two years, or by a fine of not more than five hundred dollars. 24

Forgery of
stamp or seal.
1898, 562, § 114.
1901, 371, § 3.

SECTION 2. Whoever forges or procures to be forged, or assists 1
in forging, the seal of the court of land registration, or, without 2
lawful authority, stamps or procures to be stamped, or assists in 3
stamping, any document with such forged seal or with the genuine 4
seal of said court, shall be punished as provided in the preceding 5
section. Whoever forges or procures to be forged, or assists in 6
forging, the stamp of any railroad company or of any railroad ticket 7
agent, or stamps or procures to be stamped, or assists in stamping, 8
any railroad ticket or railroad mileage book with such forged stamp, 9
or with a genuine stamp of any railroad company or railroad ticket 10
agent without being duly authorized thereto shall be punished by 11
imprisonment in the state prison for not more than three years or 12
in jail for not more than two years, or by a fine of not more than 13
five hundred dollars. 14

Uttering
forged record
or contract.
1892-3, 18, § 8.
1784, 67.
1785, 21, § 3.
1804, 120, § 1.
1805, 88, § 1.
R. S. 127, § 2.
G. S. 162, § 2.
P. S. 204, § 2.
1901, 371, § 2.
9 Gray, 123.
10 Gray, 477,
483.
2 Allen, 165.

SECTION 3. Whoever, with intent to injure or defraud, utters 1
and publishes as true a false, forged or altered record, deed, instru- 2
ment or other writing mentioned in the two preceding sections, 3
knowing the same to be false, altered, forged or counterfeit, shall 4
be punished by imprisonment in the state prison for not more than 5
ten years or in jail for not more than two years. Whoever, with 6
intent to injure or defraud, utters and publishes as true a false, forged 7
or altered railroad ticket, railroad mileage book or railroad pass 8
mentioned in section one, knowing the same to be false, altered, 9
forged or counterfeited, shall be punished by imprisonment in the 10
state prison for not more than three years or in jail for not more 11
than two years, or by a fine of not more than five hundred dollars. 12

Forging note
of treasurer
and receiver
general, etc.
1804, 120, § 2.
R. S. 127, § 3.
G. S. 162, § 3.
P. S. 204, § 3.

SECTION 4. Whoever, with intent to injure or defraud, falsely 1
makes, alters, forges or counterfeits a note, certificate or other bill 2
of credit issued by the treasurer and receiver general, or by any 3
commissioner or other officer authorized to issue the same for a 4
debt of this commonwealth, shall be punished by imprisonment in 5
the state prison for life or for any term of years. 6

— bank bill or
note.
1781, 34.

SECTION 5. Whoever, with intent to injure or defraud, falsely 1
makes, alters, forges or counterfeits a bank bill or promissory 2

3 note payable to the bearer thereof or to the order of any person,
 4 issued by an incorporated banking company established in this com-
 5 monwealth or elsewhere, shall be punished by imprisonment in the
 6 state prison for life or for any term of years.

11 Gray, 306.

1783, 53, § 2.
 1785, 21, § 5.
 1804, 120, § 2.
 R. S. 127, § 4.
 G. S. 162, § 4.
 P. S. 204, § 4.
 2 Gray, 70.

1 SECTION 6. Whoever has in his possession at the same time ten
 2 or more similar false, altered, forged or counterfeit notes, bills of
 3 credit, bank bills or notes, such as are mentioned in any of the
 4 preceding sections, payable to the bearer thereof, or to the order
 5 of any person, knowing the same to be false, altered, forged or
 6 counterfeit, with intent to utter or pass the same as true, and
 7 thereby to injure or defraud, shall be punished by imprisonment in
 8 the state prison for life or for any term of years.

Possession of
 ten or more
 counterfeit
 bills, with
 intent, etc.
 1804, 120, § 2.
 R. S. 127, § 5.
 G. S. 162, § 5.
 P. S. 204, § 5.
 2 Mass. 132.
 8 Mass. 59, 107.
 4 Pick. 233.
 19 Pick. 124.
 97 Mass. 571.

1 SECTION 7. Whoever utters or passes or tenders in payment as
 2 true any such false, altered, forged or counterfeit note, certificate
 3 or bill of credit for any debt of this commonwealth, or a bank bill
 4 or promissory note payable to the bearer thereof or to the order of
 5 any person, issued as aforesaid, knowing the same to be false,
 6 altered, forged or counterfeit, with intent to injure or defraud, shall
 7 be punished by imprisonment in the state prison for not more than
 8 five years, or by a fine of not more than one thousand dollars and
 9 imprisonment in jail for not more than one year.

11 Mass. 136.

11 Gray, 306.

2 Allen, 165.

4 Allen, 305.

Passing coun-
 terfeit bill or
 forged note.
 1704-5, 8, § 1.
 1720-1, 10.
 1735-6, 18.
 1736-7, 9, § 1.
 1775-6, 18, §§ 1, 3.
 1776-7, 44, § 2.
 1778-9, 25, §§ 1, 2.
 1781, 34.
 1783, 53, § 3.
 1785, 21, § 5.
 1804, 120, § 3.
 R. S. 127, § 6.
 G. S. 162, § 6.
 P. S. 204, § 6.

1 SECTION 8. Whoever, having been convicted of the crime men-
 2 tioned in the preceding section, is again convicted of the like crime
 3 committed after the former conviction, and whoever is at the same
 4 sitting of the court convicted upon three distinct charges of such
 5 crime, shall be adjudged a common utterer of counterfeit bills,
 6 and be punished by imprisonment in the state prison for not more
 7 than ten years.

Second convic-
 tion, and three
 convictions at
 same sitting.
 1714, 6.
 1804, 120, § 3.
 R. S. 127, § 7.
 G. S. 162, § 7.
 P. S. 204, § 7.

1 SECTION 9. Whoever brings into this commonwealth or has
 2 in his possession a false, forged or counterfeit bill or note, in the
 3 similitude of the bills or notes, payable to the bearer thereof or to
 4 the order of any person, issued by or for a bank or banking com-
 5 pany, established in this commonwealth or elsewhere, with intent
 6 to utter or pass the same or to render the same current as true,
 7 knowing the same to be false, forged or counterfeit, shall be pun-
 8 ished by imprisonment in the state prison for not more than five
 9 years or by a fine of not more than one thousand dollars and im-
 10 prisonment in jail for not more than one year.

Having coun-
 terfeit bill,
 with intent,
 etc.
 1804, 120, § 4.
 1833, 222, § 1.
 R. S. 127, § 8.
 1836, 4, §§ 15, 16.
 G. S. 162, § 8.
 P. S. 204, § 8.
 2 Mass. 138.
 7 Pick. 137.
 3 Met. 406.
 8 Met. 235.
 10 Gray, 472.
 10 Allen, 184.

1 SECTION 10. Whoever engraves, makes, or mends or begins to
 2 engrave, make or mend, a plate, block, press or other tool, instru-
 3 ment or implement, or makes or provides paper or other material
 4 adapted to and designed for the forging or making of a false and
 5 counterfeit note, certificate or other bill of credit, purporting to
 6 be issued by lawful authority for a debt of this commonwealth, or
 7 a false and counterfeit note or bill in the similitude of the notes or
 8 bills issued by a bank or banking company established in this
 9 commonwealth or elsewhere, and whoever has in his possession
 10 such a plate or block engraved in any part, or a press or other

Making or
 having tool,
 etc., for coun-
 terfeiting, with
 intent, etc.
 1704-5, 8, § 1.
 1720-1, 10.
 1735-6, 18.
 1775-6, 18, § 1.
 1776-7, 44, § 1.
 1783, 53, § 4.
 1804, 120, § 5.
 1833, 222, § 2.
 R. S. 127, § 9.
 G. S. 162, § 9.
 P. S. 204, § 9.

tool, instrument or implement, or paper or other material, adapted and designed as aforesaid, with intent to use the same or to cause or permit the same to be used in forging or making such false and counterfeit certificates, bills or notes, shall be punished by imprisonment in the state prison for not more than ten years or by a fine of not more than one thousand dollars and imprisonment in jail for not more than two years.

Testimony of president, etc., of bank, dispensed with in certain cases. 1818, 110. 1833, 222, § 3. R. S. 127, § 10. G. S. 162, § 10. P. S. 204, § 10. 2 Pick. 47. 5 Cush. 605.

SECTION 11. In prosecutions for forging or counterfeiting notes or bills of the banks before mentioned, or for uttering, publishing or tendering in payment as true forged or counterfeit bank bills or notes, or for being possessed thereof with intent to utter and pass the same as true, the testimony of the president and cashier of any such bank may be dispensed with, if their place of residence is out of this commonwealth or more than forty miles from the place of trial; and the testimony of any person acquainted with the signature of such president or cashier, or who has knowledge of the difference in the appearance of the true and the counterfeit bills or notes of such banks, may be admitted to prove that such bills or notes are counterfeit.

Sworn certificates of certain officers made evidence. 1791, 61. R. S. 127, § 11. G. S. 162, § 11. P. S. 204, § 11.

SECTION 12. In prosecutions for forging or counterfeiting a note, certificate, bill of credit or other security issued on behalf of the United States, or on behalf of any state or territory, or for uttering, publishing or tendering in payment as true such forged or counterfeit note, certificate, bill of credit or security, or for being possessed thereof with intent to utter or pass the same as true, the certificate under oath of the secretary of the treasury, or of the treasurer of the United States, or of the secretary or treasurer of any state or territory, on whose behalf such note, certificate, bill of credit or security purports to have been issued, shall be admitted as evidence for the purpose of proving the same to be forged or counterfeit.

Affixing fictitious signature. R. S. 127, § 13. G. S. 162, § 12. P. S. 204, § 12. 2 Mass. 77.

SECTION 13. If a fictitious or pretended signature, purporting to be the signature of an officer or agent of a corporation, is fraudulently affixed to an instrument or writing purporting to be a note, draft or other evidence of debt issued by such corporation, with intent to pass the same as true, it shall be a forgery, although no such person may ever have been an officer or agent of such corporation, or ever have existed.

Counterfeiting coin, or having ten counterfeit pieces, etc. 1702-3, 2, §§ 1, 2. 1749-50, 22, § 1. 1753-4, 20. 1804, 120, § 6. R. S. 127, § 15. G. S. 162, § 14. P. S. 204, § 14. 8 Mass. 59. 21 Pick. 523.

SECTION 14. Whoever counterfeits any gold or silver coin current by law or usage within this commonwealth, or has in his possession at the same time ten or more pieces of false money, or coin counterfeited in the similitude of any gold or silver coin current as aforesaid, knowing the same to be false and counterfeit, and with intent to utter or pass the same as true, shall be punished by imprisonment in the state prison for life or for any term of years.

8 Met. 315.

10 Met. 256.

13 Met. 515.

1 Gray, 566.

Having less than ten pieces, with intent, etc. Uttering counterfeit coin.

SECTION 15. Whoever has in his possession any number of pieces, less than ten, of the counterfeit coin mentioned in the preceding section, knowing the same to be counterfeit, with intent

4 to utter or pass the same as true, or utters, passes or tenders in
5 payment as true any such counterfeit coin, knowing the same to
6 be false and counterfeit, shall be punished by imprisonment in the
7 state prison for not more than ten years or by a fine of not more
8 than one thousand dollars and imprisonment in jail for not more
9 than two years.

1804, 120, § 7.
R. S. 127, § 16.
G. S. 162, § 15.
P. S. 204, § 15.
21 Pick. 523.
10 Met. 256.
13 Met. 515.
1 Gray, 506.

1 SECTION 16. Whoever, having been convicted of any of the
2 crimes mentioned in the preceding section, is again convicted of
3 the same crimes committed after the former conviction, and who-
4 ever is at the same sitting of the court convicted upon three dis-
5 tinct charges of said crimes, shall be adjudged a common utterer of
6 counterfeit coin, and punished by imprisonment in the state prison
7 for not more than twenty years.

Second convic-
tion, and three
convictions at
same sitting.
1804, 120, § 7.
R. S. 127, § 17.
G. S. 162, § 16.
P. S. 204, § 16.
13 Met. 514.

1 SECTION 17. Whoever casts, stamps, engraves, makes or mends,
2 or knowingly has in his possession a mould, pattern, die, puncheon,
3 engine, press or other tool or instrument, adapted to and designed
4 for coining or making counterfeit coin, in the similitude of any
5 gold or silver coin current by law or usage in this commonwealth,
6 with intent to use or employ the same or to cause or permit the
7 same to be used or employed in coining or making any such false
8 and counterfeit coin as aforesaid, shall be punished by imprison-
9 ment in the state prison for not more than ten years or by a fine
10 of not more than one thousand dollars and imprisonment in jail
11 for not more than two years.

Making, mend-
ing, or having
tool for coin-
ing, with in-
tent, etc.
1804, 120, § 8.
R. S. 127, § 18.
G. S. 162, § 17.
P. S. 204, § 17.
6 Met. 221.

1 SECTION 18. Whoever issues or passes a note, bill, order or
2 check, other than foreign bills of exchange, the notes or bills of a
3 bank incorporated by the laws of this commonwealth, of the United
4 States, of some one of the United States or of any of the British
5 Provinces of North America, with the intent that the same shall be
6 circulated as currency, shall be punished by a fine of fifty dollars
7 for each offence.

Issuing or
passing note
as currency,
etc., except,
etc.
1833, 206.
R. S. 36, § 70.
G. S. 162, § 18.
P. S. 204, § 18.

1 SECTION 19. Whoever issues or passes a note, bill, order or
2 check, other than the notes or bills of a bank incorporated under
3 the authority of this commonwealth, of the United States or of
4 some one of the United States, for an amount less than five dollars,
5 or whereon a less amount than five dollars is due at the time of such
6 issuing or passing thereof, with intent that the same shall be cir-
7 culated as currency, shall be punished by a fine of fifty dollars for each
8 offence.

— small note,
etc., as cur-
rency, except,
etc.
1804, 58, §§ 1, 2;
136, § 1.
R. S. 33, § 7.
G. S. 162, § 19.
P. S. 204, § 19.

1 SECTION 20. Whoever receives or puts in circulation as currency
2 a bank note or bill which is, or a part of which is, for any fractional
3 part of a dollar shall be punished by a fine of twenty-five dollars.

Circulation of
fractional bill.
1853, 302, § 2.
G. S. 162, § 20.
P. S. 204, § 20.

1 SECTION 21. Whoever fraudulently connects different parts of
2 several bank notes or other genuine instruments in such manner as
3 to produce one additional note or instrument, with intent to pass
4 all of them as genuine, shall be guilty of forgery, in like manner as
5 if each of them had been falsely made or forged.

Fraudulently
connecting
parts of sev-
eral bank
notes, etc.
R. S. 127, § 12.
G. S. 162, § 21.
P. S. 204, § 21.

Wilful and malicious injury to bank bill.
1852, 64.
G. S. 162, § 22.
P. S. 204, § 22.

SECTION 22. Whoever wilfully and maliciously tears, cuts or in any manner damages and impairs the usefulness for circulation of a bank bill or note of a bank in this commonwealth shall be punished by a fine of not more than ten dollars for each offence; but the possession or uttering of a bill so injured shall not be evidence against a party charged, unless connected with other circumstances tending to prove that the bill or note was injured by him.

— gathering up, etc., bills of bank for purpose of injuring business, etc. Penalty.
1859, 116, §§ 3, 4.
G. S. 162, § 23.
P. S. 204, § 23.

SECTION 23. Whoever maliciously gathers up or retains or maliciously aids in gathering up or retaining bills or notes of a bank or banking company, current by law or usage in this commonwealth, for the purpose of injuring or impeding the circulation or business of such bank or banking company, or of compelling it to do any act out of the usual course of its business, shall be punished by a fine of not more than five hundred dollars or by imprisonment for not more than two years; and in the prosecution of any such crime it shall not be necessary to set out and describe each bill, but it shall be sufficient to aver and prove any amount of the bills of any bank which have been so gathered up or retained.

Possession of worthless bills, not current, etc.
1857, 231, § 1.
G. S. 162, § 24.
P. S. 204, § 24.

SECTION 24. Whoever has in his possession at the same time five or more bank bills or notes not current which are worthless as bank bills or notes, knowing the same to be worthless as aforesaid, or has papers not bank bills or notes, but made in the similitude of bank bills or notes, or papers purporting to be the bills or notes of a bank which has never existed, knowing the character of such papers, with intent to pass, utter or circulate the same, or to procure any other person so to do, for the purpose of injuring or defrauding, shall be punished by imprisonment in the state prison for not more than five years or by a fine of not more than five hundred dollars and imprisonment in the house of correction for not more than three years.

Uttering or passing such bill, etc.
1857, 231, § 2.
G. S. 162, § 25.
P. S. 204, § 25.
7 Allen, 537.

SECTION 25. Whoever utters or passes or tenders in payment as true any such worthless bank bill or note not current or any paper not a bank bill or note but made in the similitude of a bank bill or note, or any paper purporting to be the bill or note of a bank which has never existed, knowing the same to be worthless and not current, as aforesaid, with intent to injure and defraud, shall be punished by imprisonment in the state prison for not more than five years or by a fine of not more than five hundred dollars and imprisonment in the house of correction for not more than three years.

Engraving, etc., shop bill, resembling bank bills.
1849, 5.
G. S. 162, § 26.
1862, 63.
P. S. 204, § 26.

SECTION 26. Whoever engraves, prints, issues, utters or circulates a shop bill or advertisement, in similitude, form and appearance like a bank bill, on paper similar to paper used for bank bills, and with vignettes, figures or decorations used on bank bills, or having the general appearance of a bank bill, or in similitude, form and appearance, like a treasury note, note, certificate, bill of credit or other security issued by or on behalf of the United States, on paper similar to paper used for the same, respectively, and with vignettes, figures or decorations used thereon, or having the general appearance of a treasury note, note, certificate, bill of credit

11 or other security issued by or on behalf of the United States, shall
 12 be punished by a fine of not more than fifty dollars or by impris-
 13 onment in jail for not more than ninety days.

1 SECTION 27. When false, forged or counterfeit bank bills or
 2 notes, or forged or counterfeit notes or bonds of any state or cor-
 3 poration, or plates, dies or other tools, instruments or implements
 4 used by counterfeiters, or designed for the forging or making of
 5 false or counterfeit notes, coin or bills, or worthless bank bills or
 6 notes not current described in sections twenty-four and twenty-five,
 7 come to the knowledge of a sheriff, constable, police officer or
 8 other officer of justice, he shall immediately seize and take posses-
 9 sion of and deliver them into the custody of the superior court
 10 which shall cause them to be destroyed by an officer of the court,
 11 who shall make return to the court of his doings in the premises.

Sheriff, etc., to
 seize counter-
 feit bills, etc.
 1835, 168, § 1.
 1857, 231, § 3.
 G. S. 162, § 27.
 1875, 40.
 P. S. 204, § 27.

1 SECTION 28. Upon a conviction of any crime mentioned in
 2 sections four, five, fourteen, fifteen, seventeen and twenty-five or
 3 also upon forfeiture by persons prosecuted for any such crime of
 4 any recognizance for their appearance to answer to the same, the
 5 superior court may order compensation to the prosecutor and to
 6 the officer who has secured and kept the evidence of the crime, not
 7 exceeding their actual expenses, with a reasonable allowance for
 8 their time and trouble, which shall be paid by the county.

Compensation
 to prosecutors,
 etc., of forgers,
 etc.
 1713-14, 11, § 1.
 1715-16, 15.
 1749-50, 22, § 5.
 1804, 120, § 9.
 1814, 95.
 R. S. 127, § 19.
 1845, 153, 248.
 1846, 142.
 G. S. 162, § 28.
 1860, 191, § 10.
 P. S. 204, § 28.

CHAPTER 210.

OF CRIMES AGAINST PUBLIC JUSTICE.

1 SECTION 1. Whoever, being lawfully required to depose the
 2 truth in a judicial proceeding or in a proceeding in a course of
 3 justice, wilfully swears or affirms falsely in a matter which is
 4 material to the issue or point in question, or whoever, being re-
 5 quired by law to take an oath or affirmation, wilfully swears or
 6 affirms falsely in a matter relative to which such oath or affirmation
 7 is required, shall be guilty of perjury. Whoever commits perjury
 8 on the trial of an indictment for a capital crime shall be punished
 9 by imprisonment in the state prison for life or for any term of years,
 10 and whoever commits perjury in any other case shall be punished
 11 by imprisonment in the state prison for not more than twenty years
 12 or by a fine of not more than one thousand dollars or by imprison-
 13 ment in jail for not more than three years, or by both such fine and
 14 imprisonment in jail.

Perjury.
 B. L. 94, § 11.
 C. L. 15, § 11.
 1692-3, 18, § 9.
 1784, 51, § 1.
 1797, 35, § 10.
 1812, 144, § 1.
 1824, 91, § 2.
 1829, 56.
 R. S. 94, § 12;
 128, §§ 1, 2.
 G. S. 163, §§ 1, 2.
 P. S. 205, §§ 1, 2.
 1892, 123.
 1898, 562, § 112.
 12 Mass. 274.
 15 Gray, 498.
 108 Mass. 473.
 116 Mass. 17.
 150 Mass. 168.
 166 Mass. 174.

1 SECTION 2. Whoever is guilty of subornation of perjury, by
 2 procuring another person to commit perjury, shall be punished as
 3 for perjury. R. S. 128, § 3. G. S. 163, § 3. P. S. 205, § 3. 11 Allen, 243. 152 Mass. 498.

— suborna-
 tion of.
 1692-3, 18, § 9.
 1784, 51, § 2.
 1812, 144, § 2.

1 SECTION 3. Whoever attempts to incite or procure another per-
 2 son to commit perjury, although no perjury is committed, shall be
 3 punished by imprisonment in the state prison for not more than five
 4 years or in jail for not more than one year. 161 Mass. 120.

— inciting to.
 1784, 51, § 3.
 1812, 144, § 3.
 R. S. 128, § 4.
 G. S. 163, § 4.
 P. S. 205, § 4.

Commitment
on presump-
tion of perjury.
R. S. 128, § 6.
G. S. 163, § 5.
P. S. 205, § 7.

SECTION 4. If it appears to a court of record that a party or a witness who has been legally sworn and examined, or has made an affidavit, in any proceeding in a court or course of justice has so testified as to create a reasonable presumption that he has committed perjury therein, the court may forthwith commit him or may require him to recognize with sureties for his appearance to answer to an indictment for perjury; and thereupon the witnesses to establish such perjury may, if present, be bound over to the superior court, and notice of the proceedings shall forthwith be given to the district attorney.

Papers, etc.,
may be
secured.
R. S. 128, § 7.
G. S. 163, § 6.
P. S. 205, § 8.

SECTION 5. If perjury is reasonably presumed, as aforesaid, papers, books or documents which have been produced and which are considered necessary to be used on a prosecution for such perjury may by an order of the court be detained from the person who produces them so long as may be necessary for their use in such prosecution.

Bribe to officer.
R. S. 128, § 8.
G. S. 163, § 7.
P. S. 205, § 9.
1891, 349, § 1.
135 Mass. 530.
156 Mass. 480.
170 Mass. 228.

SECTION 6. Whoever corruptly gives, offers or promises to a legislative, executive, judicial, county or municipal officer, after his election or appointment, either before or after he has qualified or has taken his seat, any gift or gratuity whatever, with intent to influence his act, vote, opinion, decision or judgment upon any matter, question, cause or proceeding which may be then pending, or which may by law come or be brought before him in his official capacity, or as a consideration for any speech, work or service in connection therewith, shall be punished by imprisonment in the state prison for not more than five years or by a fine of not more than three thousand dollars and imprisonment in jail for not more than one year.

Acceptance of
bribe by officer.
R. S. 128, § 9.
G. S. 163, § 8.
P. S. 205, § 10.
1891, 349, § 2.

SECTION 7. A legislative, executive, judicial, county or municipal officer who corruptly requests or accepts a gift or gratuity or a promise to make a gift or to do an act beneficial to him, under an agreement or with an understanding that his vote, opinion or judgment shall be given in any particular manner, or upon a particular side of any question, cause or proceeding, which is or may be by law brought before him in his official capacity or as a consideration for any speech, work or service in connection therewith, or that, in such capacity, he shall make any particular nomination or appointment, shall forfeit his office, be forever disqualified to hold any public office, trust or appointment under the constitution or laws of this commonwealth, and be punished by imprisonment in the state prison for not more than ten years or by a fine of not more than five thousand dollars and imprisonment in jail for not more than two years.

Taking com-
mission, etc.,
by public
officer.
1862, 101, §§ 1, 2.
P. S. 205, § 11.
1893, 271, § 1.

SECTION 8. An officer or agent of, or a person employed by, the commonwealth, or by a county, city, town or by any public institution not mentioned in section eleven who, being authorized to procure materials, supplies or other articles either by purchase or contract, or to employ service or labor, receives, directly or indirectly, for himself or for another, a commission, discount, bonus, present or reward from the person who makes such contract, fur-

8 nishes such materials, supplies or other articles, or from a person
9 who renders service or labor under such contract, or a person who
10 gives or offers such commission, discount, bonus, present or reward,
11 shall be punished by a fine of not less than ten nor more than five
12 hundred dollars or by such fine and imprisonment for not more than
13 one year.

1 SECTION 9. A member of the general court, or of the executive
2 council, or of a state commission, who is personally interested, di-
3 rectly or indirectly, in a contract made by the general court or by
4 either branch thereof or by such commission or by its authority, in
5 which the commonwealth is an interested party: or a person who
6 alone or with others represents the commonwealth in making such
7 contract who is so interested: or such member or person who re-
8 ceives a commission, discount, bonus, present or reward from a per-
9 son or persons making or performing such contract: or a member of
10 either branch of a city council or of a municipal board of a city who
11 is personally interested, directly or indirectly, in a contract made
12 by the city council or by either branch thereof or by such board or
13 by authority derived therefrom, in which the city is an interested
14 party; or a person who alone or with others represents a city in
15 making such contract who is so interested: or such member or per-
16 son who, directly or indirectly, for himself or for another receives
17 a commission, discount, bonus, present or reward from any person
18 or persons making or performing such contract, shall be punished
19 by a fine of not less than fifty nor more than one thousand dollars,
20 or by such fine and by imprisonment for not more than one year.

Taking com-
mission, etc.,
by member
of legislature,
city council,
etc.
1872, 274.
1875, 232.
P. S. 205, § 12.
[1 Op. A. G.
502.]

1 SECTION 10. A county officer who is personally interested, di-
2 rectly or indirectly, in a contract made by the county treasurer,
3 county commissioners, or by their authority, in which the county
4 is an interested party, or a person who alone or with others repre-
5 sents a county in making such contract, who is so interested, or
6 such officer or person who, directly or indirectly, for himself or
7 for another, receives a commission, discount, bonus, present or re-
8 ward from a person making or performing such contract, shall be
9 punished as provided in the preceding section.

—for county
contracts.
1863, 271, § 2.

1 SECTION 11. An officer who is connected with a prison, house
2 of correction, insane asylum or hospital or other public charitable
3 institution who is personally interested, directly or indirectly, in a
4 contract, purchase or sale made on account of such institution, or
5 who corruptly accepts a bribe, present or gratuity from any person
6 interested in such contract or a person who is interested, directly
7 or indirectly, in a contract connected with any such institution who
8 corruptly gives, offers or promises to an officer of such institution
9 a bribe, gift or gratuity, shall be punished by imprisonment in the
10 state prison for not more than three years or by a fine of not more
11 than one thousand dollars or by imprisonment in jail for not more
12 than two years or by both such fine and imprisonment in jail.

Bribery of
officer of pub-
lic charitable
institution, etc.
1872, 282.
P. S. 205, § 13.

1 SECTION 12. Whoever corrupts or attempts to corrupt a master
2 in chancery, auditor, juror, arbitrator, umpire or referee by giving,
3 offering or promising any gift or gratuity whatever, with intent to

Corrupting
juror, arbitra-
tor, etc.
R. S. 128, § 10.
G. S. 163, § 9.
P. S. 205, § 14.

bias the opinion or influence his decision, relative to a cause or matter pending in the court, or before an inquest, or for the decision of which he has been chosen or appointed, shall be punished by imprisonment in the state prison for not more than five years or by a fine of not more than one thousand dollars and imprisonment in jail for not more than one year.

Acceptance of
bribe by juror,
arbitrator, etc.
R. S. 128, § 11.
G. S. 163, § 10.
P. S. 205, § 15.
174 Mass. 79.

SECTION 13. A person who, being summoned as a juror or chosen or appointed as an arbitrator, umpire or referee, or who, being a master in chancery or auditor, corruptly takes anything to give his verdict, award or report, or corruptly receives any gift or gratuity from a party to a suit, cause or proceeding for the trial or decision of which such juror has been summoned, or for the hearing or determination of which such master in chancery, auditor, arbitrator, umpire or referee has been chosen or appointed, shall be punished by imprisonment in the state prison for not more than five years or by a fine of not more than one thousand dollars and imprisonment in the jail for not more than one year.

Aiding escape
from prison,
and rescuing
prisoner.
C. L. 127, § 4.
1700-1, 2, §§ 3, 4.
1784, 41, § 2.
1805, 113, §§ 6, 8.
1811, 32, § 8.
1827, 118, § 24.
R. S. 128, § 12;
144, § 41.
G. S. 163, § 11;
179, § 57.
P. S. 205, § 16;
221, § 40.
119 Mass. 347.

SECTION 14. Whoever conveys into the state prison, the Massachusetts reformatory or reformatory prison for women or into a jail, house of correction, house of reformation or like place of confinement, a disguise, instrument, tool, weapon or other thing which is adapted or useful to aid a prisoner in making his escape, with intent to aid the escape of a prisoner, or whoever, by any means, aids or assists such prisoner in an attempt to escape therefrom, whether such escape is effected or attempted or not, and whoever forcibly or fraudulently rescues or attempts to rescue a prisoner who is held in custody upon a conviction or charge of crime, shall, if the person whose escape or rescue was effected or intended is a convict under sentence in the state prison, be punished by imprisonment in the state prison for not more than ten years or by a fine of not more than five hundred dollars; but if he is a convict under sentence in any other of said institutions, by imprisonment in the state prison for not more than seven years, and if he is charged with a misdemeanor, then by imprisonment in jail for not more than two years or by a fine of not more than five hundred dollars.

Escape from
state prison.
1805, 113, §§ 9,
10.
1811, 32, §§ 9, 10.
1827, 118, §§ 11,
12.
R. S. 144, §§ 37,
38.
G. S. 179, §§ 53,
54.
1873, 73, § 1.
P. S. 221, §§ 36,
37.
5 Allen, 131.
161 Mass. 223.

SECTION 15. A convict who escapes from the state prison, or who attempts by violence to escape, or who assaults the warden or other officer or person employed in the prison, shall, in addition to his former sentence, if he is under sentence for a term of years, be punished by imprisonment in said prison for not more than ten years and by solitary imprisonment for not more than one year, to be executed forthwith or at such time or times either before or after the expiration of any former sentence as the court orders; and, if he is under sentence of imprisonment for life, by solitary imprisonment for not more than one year, to be executed at such time or times as the court orders.

— from prison
for women.
1885, 94, §§ 2, 3.

SECTION 16. A convict in the reformatory prison for women who escapes or attempts to escape therefrom or who, while being taken therefrom for any purpose, escapes or attempts to escape from the land appurtenant thereto shall be punished by imprisonment in said

5 prison or in the house of correction in the county of Middlesex for
6 not more than two years. The first district court of southern Mid-
7 dlesex shall have jurisdiction concurrent with the superior court of
8 violations of the provisions of this section.

1 SECTION 17. Whoever, being lawfully imprisoned in a penal in-
2 stitution, except the state prison, the state farm or the reformatory
3 prison for women, breaks therefrom and escapes, or breaks there-
4 from with intent to escape, or by force or violence attempts to es-
5 cape therefrom, shall be punished by imprisonment in the state
6 prison for not more than five years or in the jail or house of cor-
7 rection for not more than three years or by a fine of not more than
8 one thousand dollars.

Other escapes.
1818, 123, § 7.
1834, 151, § 14.
R. S. 143, §§ 49-
51.
1851, 93.
G. S. 178, § 46.
P. S. 220, § 50.
4 Met. 361.
5 Met. 555.
101 Mass. 24.
133 Mass. 399.

1 SECTION 18. Whoever, being imprisoned in a penal institution,
2 except the state prison, is taken outside of such institution by an
3 officer thereof for the purpose of performing labor on any public
4 land or building belonging to the commonwealth or to the county,
5 city or town in which such institution is located, escapes or at-
6 tempts to escape from the custody of such officer shall be deemed
7 to have escaped from such institution and shall be punished by im-
8 prisonment for not more than six months.

Escapes when
taken outside
institutions.
1882, 198.

1 SECTION 19. Whoever gives, sells or delivers spirituous or in-
2 toxicating liquor to a person who is confined in any prison or other
3 place of confinement, or to a person who is in the custody of a
4 sheriff, constable, police officer, warden of a prison, or other master
5 or keeper of a place of confinement, or has in his possession, within
6 the precincts of any prison or other place of confinement, any such
7 liquor, with intent to convey or deliver it to any person who is con-
8 fined therein, unless under the direction of the physician appointed
9 to attend such prisoner, shall be punished by a fine of not more
10 than fifty dollars or by imprisonment for not more than two months.

Furnishing
liquor to
prisoner.
1834, 151, § 21.
R. S. 143, § 37.
1854, 93.
G. S. 178, § 43.
P. S. 222, § 2.

1 SECTION 20. A sheriff, jailer, master of a house of correction
2 or other officer or under keeper of a prison who, under any pre-
3 tence, gives, sells or delivers or knowingly permits to be given,
4 sold or delivered to a prisoner in his custody who has been com-
5 mitted to jail for debt and is there supported at the expense of the
6 creditor, or to a prisoner who is detained upon a conviction or
7 charge of crime, any spirituous liquor or mixed liquor a part of
8 which is spirituous, or wine, cider or strong beer, unless the physi-
9 cian of the prison certifies in writing that the health of the prisoner
10 requires it; or such sheriff, jailer, master of a house of correction
11 or other officer or under keeper of a prison who willingly or negli-
12 gently suffers such prisoner to have or drink any spirituous, fer-
13 mented or other strong or mixed liquor or who places or keeps
14 together prisoners in his custody of different sexes or classes, con-
15 trary to the provisions of section seventeen of chapter two hundred
16 and twenty-five, shall forfeit twenty-five dollars for the first offence
17 and fifty dollars for any subsequent offence which is committed
18 after the first conviction, and, upon such second conviction, shall
19 be further sentenced to be removed from office, and to be incapable
20 of holding the office of sheriff, deputy sheriff, jailer, master or

Same subject.
1817, 149, §§ 3, 4.
1823, 148, §§ 2, 4.
1834, 151, § 20,
21.
R. S. 143, §§ 36,
37.
G. S. 178, §§ 42,
44.
P. S. 220, §§ 47,
48.

kéeper of any prison for five years thereafter. If the physician 21
certifies that the health of the prisoner requires such liquor, the 22
prisoner shall be allowed the quantity prescribed and no more. 23

Aiding escape
from an officer.
1811, § 2, § 8.
1827, 118, § 24.
R. S. 128, § 13.
G. S. 163, § 12.
P. S. 205, § 17.
119 Mass. 291.

SECTION 21. Whoever aids or assists a prisoner in escaping or 1
attempting to escape from an officer or person who has the lawful 2
custody of such prisoner shall be punished by imprisonment for not 3
more than two years or by a fine of not more than five hundred 4
dollars. 5

Disturbance
of penal
institutions.
1885, 303.

SECTION 22. Whoever wilfully disturbs the state prison, the 1
Massachusetts reformatory, the reformatory prison for women, or 2
a jail or house of correction, or in any manner seeks to attract the 3
attention of, or without the permission of the officer in charge has 4
communication with, an inmate thereof shall be punished by impris- 5
onment for not more than three months or by a fine of not more 6
than fifty dollars. 7

Illicit convey-
ance of articles
to or from
reformatory.
1805, 113, § 8.
1825, 84, § 4.
R. S. 144, § 42.
1838, 152, § 1.
G. S. 179, § 58.
1878, 133.
1879, 294, § 34.
P. S. 221, § 41.
1887, 339.

SECTION 23. Whoever delivers or procures to be delivered, or 1
has in his possession with intent to deliver, to a convict confined in 2
the state prison, the Massachusetts reformatory or the reformatory 3
prison for women, or whoever deposits or conceals in or about the 4
prison or reformatories or the dependencies thereof, or upon any 5
land appurtenant thereto, or in any boat, carriage or other vehicle 6
going into the premises belonging to the prison or reformatories, 7
any article or thing, with intent that a convict shall obtain or re- 8
ceive it, and whoever receives from a convict any article or thing 9
with intent to convey it out of the prison or reformatory, contrary 10
to the rules and regulations thereof, and without the knowledge and 11
permission of the board of prison commissioners, of the warden of 12
the state prison or the superintendents of said reformatories, respec- 13
tively, shall be punished by imprisonment in the state prison or jail 14
for not more than three years or by a fine of not more than five 15
hundred dollars. 16

Interference
with police
signal systems.
1888, 291.
1901, 527.

SECTION 24. Whoever opens a signal box connected with a 1
police signal system for the purpose of giving or causing to be 2
given a false alarm, or interferes in any way with such box by 3
breaking, cutting, injuring or defacing the same; or whoever, 4
without authority, opens, tampers or meddles with such box, or 5
with any part or parts thereof, or with the police signal wires, or 6
with anything connected therewith, or whoever, with such purpose, 7
wantonly and without cause tampers or meddles with a signal box 8
connected with a fire signal system or with any part or thing con- 9
nected therewith, shall be punished by a fine of not more than five 10
hundred dollars or by imprisonment for not more than two years 11
or by both such fine and imprisonment. 12

Voluntary
escape.
1700-1, 2, § 6.
1784, 41, § 3.
R. S. 128, § 14.
G. S. 163, § 13.
P. S. 205, § 18.

SECTION 25. A jailer or other officer who, except as provided in 1
the following section, voluntarily suffers a prisoner in his custody 2
upon conviction or upon a charge of crime to escape shall suffer the 3
punishment and penalties to which the prisoner whom he suffered 4
to escape was sentenced or would be liable to suffer upon conviction 5
of the crime wherewith he stood charged. 6

1 SECTION 26. An officer or other person, who, being employed
2 in the state prison, voluntarily suffers a convict confined therein to
3 escape, or in any way consents to such escape, shall be punished
4 by imprisonment in said prison for not more than twenty years.

Escape from
state prison.
1805, 113, § 6.
1827, 118, § 22.
R. S. 144, § 39.
G. S. 179, § 55.
P. S. 221, § 38.

1 SECTION 27. A jailer or other officer who, through negligence,
2 suffers a prisoner in his custody upon conviction or upon a charge
3 of crime to escape, or wilfully refuses to receive into his custody
4 a prisoner lawfully directed to be committed thereto upon convic-
5 tion, upon a charge of crime, or upon a lawful process, shall be
6 punished by imprisonment for not more than two years or by a fine
7 of not more than five hundred dollars.

Negligent es-
cape, and re-
fusal to receive
a prisoner.
C. L. 128, § 2.
1700-1, 2, § 7.
1784, 41, § 3.
R. S. 128, § 15.
G. S. 163, § 14.
P. S. 205, § 19.

1 SECTION 28. An officer or person who, being employed in the
2 state prison, suffers a convict under sentence of solitary imprison-
3 ment to be at large or out of the cell assigned to him, or suffers
4 any convict who is confined in the prison to be at large out of the
5 prison, or to be visited, conversed with or in any way relieved or
6 comforted, contrary to the regulations of the prison, shall be pun-
7 ished by a fine of not more than five hundred dollars.

Leaving pris-
oner at large.
1805, 113, § 7.
1811, 32, § 7.
1827, 118, § 23.
G. S. 179, § 56.
P. S. 221, § 39.

1 SECTION 29. An officer who wilfully delays service of a warrant
2 of arrest or a search warrant which has been committed to him for
3 service, shall be punished by a fine of not more than fifty dollars.

Delay of
service of
warrant.
1899, 389.

1 SECTION 30. An officer who, being authorized to serve process,
2 wilfully and corruptly refuses to execute a lawful process directed
3 to him and requiring him to apprehend or confine a person con-
4 victed of or charged with crime, or wilfully and corruptly omits or
5 delays to execute such process, whereby such person escapes, shall
6 be punished by imprisonment for not more than one year or by a
7 fine of not more than five hundred dollars.

Refusal to ar-
rest, and suffer-
ing escape.
R. S. 128, § 16.
G. S. 163, § 15.
P. S. 205, § 20.

1 SECTION 31. Whoever, being required in the name of the com-
2 monwealth by a sheriff, deputy sheriff, constable, police officer or
3 watchman, neglects or refuses to assist him in the execution of his
4 office in a criminal case, in the preservation of the peace or in the
5 apprehension or securing of a person for a breach of the peace, or
6 in a case of escape or rescue of persons arrested upon civil process,
7 shall be punished by imprisonment for not more than one month
8 or by a fine of not more than fifty dollars.

—to aid
officer.
1795, 68, § 1.
R. S. 128, § 17.
1855, 45.
G. S. 163, § 16.
P. S. 205, § 21.

1 SECTION 32. Whoever, being required by a justice of the
2 peace, upon view of a breach of the peace or of any other offence
3 proper for his cognizance, to apprehend the offender, refuses or
4 neglects to obey such justice, shall be punished as provided in the
5 preceding section; and no person to whom such justice is known
6 or declares himself to be a justice of the peace shall plead any
7 excuse on pretence of ignorance of his office.

—to arrest
upon order
of a justice of
the peace.
1795, 68, § 3.
R. S. 128, § 18.
G. S. 163, § 17.
P. S. 205, § 22.

1 SECTION 33. Whoever falsely assumes or pretends to be a jus-
2 tice of the peace, special commissioner, sheriff, deputy sheriff,
3 medical examiner, associate medical examiner, constable, police
4 officer or watchman, and acts as such or requires a person to aid

Falsely assum-
ing to be a
justice of the
peace, etc.
1795, 68, § 2.
R. S. 128, § 19.
G. S. 163, § 18.

1877, 200, § 24.
P. S. 205, § 23.
1898, § 18.
1899, 178, § 7.
10 Cush. 61.

or assist him in a matter pertaining to the duty of such officer, 5
shall be punished by imprisonment for not more than one year or 6
by a fine of not more than four hundred dollars. 7

Acting as
justice of the
peace, etc.,
after expira-
tion of com-
mission.
1865, 234, § 2.
P. S. 205, § 24.
1899, 178, § 8.

SECTION 34. Whoever presumes to act as a justice of the peace, 1
special commissioner or notary public after the expiration of his 2
or her commission, and after receiving notice of such expiration, 3
shall be punished by a fine of not less than one hundred nor more 4
than five hundred dollars. 5

Disguising to
resist execu-
tion of the
law.
1809, 123, § 2.
R. S. 128, § 20.
G. S. 163, § 19.
P. S. 205, § 25.

SECTION 35. Whoever disguises himself with intent to obstruct 1
the due execution of the law, or to intimidate, hinder or interrupt 2
an officer or other person in the lawful performance of his duty, 3
or in the exercise of his rights under the constitution or laws of 4
this commonwealth, whether such intent is effected or not, shall be 5
punished by imprisonment for not more than one year or by a fine of 6
not more than five hundred dollars, and may also be bound to good 7
behavior for one year after the expiration of such imprisonment. 8

Unauthorized
use of seal of
city or town, or
of badge of
officer.
1881, 9.
P. S. 205, § 26.

SECTION 36. Whoever, without being duly authorized thereto, 1
prints, stamps, engravings or affixes, or causes to be printed, stamped, 2
engraved or affixed to any paper or other article a representation of 3
the seal of a city or town in this commonwealth, with intent to 4
give to such paper or article an official character which it does not 5
possess, or, without being duly authorized thereto, and with intent 6
to assume an official character which he does not possess, casts, 7
stamps, engraves, makes or has in his possession a badge or thing 8
in the likeness of an official badge of a police officer, member of a 9
fire department, or other officer appointed by a city or town in this 10
commonwealth, or by any department of such city or town, shall 11
be punished by a fine of not more than fifty dollars. 12

Concealing and
compounding
felony.
R. S. 128, § 21.
G. S. 163, § 20.
P. S. 205, § 27.
16 Mass. 91.
4 Allen, 534.
12 Allen, 557.

SECTION 37. Whoever, having knowledge of the commission 1
of a felony, takes money, or a gratuity or reward, or an engage- 2
ment therefor, upon an agreement or understanding, express or 3
implied, to compound or conceal such felony, or not to prosecute 4
therefor, or not to give evidence thereof, shall, if such crime is 5
punishable with death or imprisonment in the state prison for life, 6
be punished by imprisonment in the state prison for not more than 7
five years or in jail for not more than one year; and if such crime 8
is punishable in any other manner, by imprisonment in jail for not 9
more than two years or by a fine of not more than five hundred 10
dollars. 11

Officer taking
bribe for
neglecting
his duty.
R. S. 128, § 22.
G. S. 163, § 21.
P. S. 205, § 28.

SECTION 38. A sheriff, constable or other officer who, being 1
authorized to serve legal process, receives from a defendant or from 2
any other person any money or other valuable thing as a consid- 3
eration, reward or inducement for omitting or delaying to arrest 4
a defendant, or to carry him before a magistrate, or for delaying 5
to take a person to prison, or for postponing the sale of property 6
under an execution, or for omitting or delaying to perform any 7
duty appertaining to his office, shall be punished by a fine of not 8
more than three hundred dollars or by imprisonment for not more 9
than three months. 10

1 SECTION 39. A recording officer who wilfully and corruptly
 2 demands and receives a greater fee for an official duty or service
 3 than is allowed by law shall forfeit fifty dollars for each offence;
 4 and any other person who wilfully and corruptly demands and
 5 receives for the performance of an official duty or service, for
 6 which a fee or compensation is allowed and provided by law, a
 7 greater fee or compensation than is so allowed and provided shall
 8 forfeit thirty dollars for each offence. Such penalties may be re-
 9 covered by complaint or indictment to the use of the county, or
 10 by action of tort to the use of any person who sues therefor; but
 11 such prosecution or action shall be commenced within one year
 12 after the offence has been committed.

Extortion of
 illegal fees.
 1892-3, 37, § 2.
 1793, 41, § 6.
 R. S. 122, § 19;
 128, § 23.
 1855, 311, § 2.
 G. S. 163, § 22.
 P. S. 205, § 29.
 1 Mass. 227.
 15 Mass. 525.
 17 Mass. 410.
 1 Pick. 171.
 7 Pick. 273.

CHAPTER 211.

OF CRIMES AGAINST THE PUBLIC PEACE.

1 SECTION 1. If twelve or more persons, being armed with clubs
 2 or other dangerous weapons, or if thirty or more persons, whether
 3 armed or not, are unlawfully, riotously or tumultuously assembled
 4 in a city or town, the mayor and each of the aldermen of such city,
 5 each of the selectmen of such town, every justice of the peace liv-
 6 ing in any such city or town and the sheriff of the county and his
 7 deputies shall go among the persons so assembled, or as near to
 8 them as may be with safety, and in the name of the commonwealth
 9 command all persons so assembled immediately and peaceably to
 10 disperse; and if they do not thereupon immediately and peace-
 11 ably disperse, each of said magistrates and officers shall command
 12 the assistance of all persons there present in suppressing such riot
 13 or unlawful assembly and arresting such persons.

Suppression
 of unlawful
 assembly.
 1750-1, 17, § 1.
 1786, 38, § 1.
 1835, 140, § 1.
 R. S. 129, § 1.
 G. S. 164, § 1.
 P. S. 206, § 1.
 10 Mass. 518.

1 SECTION 2. Whoever, being present and being so commanded
 2 to assist in arresting such rioters or persons so unlawfully assem-
 3 bled, or in suppressing such riot or unlawful assembly, refuses or
 4 neglects to obey such command, or, if required by such magistrate
 5 or officer to depart from the place, refuses or neglects so to do,
 6 shall be considered one of the rioters or persons unlawfully assem-
 7 bled, and may be prosecuted and punished accordingly.

Penalty for re-
 fusel to assist
 or to disperse.
 1786, 38, § 2.
 1835, 140, § 1.
 R. S. 129, § 2.
 G. S. 164, § 2.
 P. S. 206, § 2.

1 SECTION 3. A mayor, alderman, selectman, justice of the peace,
 2 sheriff or deputy sheriff who, having notice of any such riotous or
 3 tumultuous and unlawful assembly in the city or town in which he
 4 lives, neglects or refuses immediately to proceed to the place of
 5 such assembly, or as near thereto as he can with safety, or omits or
 6 neglects to exercise the authority conferred upon him by the pro-
 7 visions of this chapter for suppressing such assembly and for arrest-
 8 ing the offenders, shall be punished by a fine of not more than
 9 three hundred dollars.

Neglect of
 mayor or other
 officer to sup-
 press, etc.
 1835, 140, § 2.
 R. S. 129, § 3.
 G. S. 164, § 3.
 P. S. 206, § 3.

1 SECTION 4. If any persons who are so riotously or unlawfully
 2 assembled, and who have been commanded to disperse, as before
 3 provided, refuse or neglect to disperse without unnecessary delay,

Officers may
 quell unlawful
 assembly by
 force, etc.
 1750-1, 17, § 2.

1786, 38, § 3.
1835, 140, § 3.
R. S. 129, § 4.
G. S. 164, § 4.
P. S. 206, § 4.
98 Mass. 444.

any two of the magistrates or officers before mentioned may require 4
the aid of a sufficient number of persons, in arms or otherwise as 5
may be necessary, and shall proceed, in such manner as in their 6
judgment is expedient, forthwith to disperse and suppress such 7
assembly, and seize and secure the persons composing the same, so 8
that they may be proceeded with according to law. 9

Armed force, if
called out, to
obey orders of
governor,
judge, etc.
R. S. 129, § 5.
G. S. 164, § 5.
P. S. 206, § 5.

SECTION 5. When an armed force, called out in the manner 1
provided by chapter sixteen to suppress a tumult or riot, or to 2
disperse a body of men acting together by force and with intent to 3
commit a felony, or to offer violence to persons or property, or with 4
intent by force or violence to resist or oppose the execution of the 5
laws of this commonwealth, arrives at the place of such unlawful, 6
riotous or tumultuous assembly, its members shall obey such orders 7
for suppressing the riot or tumult, and for dispersing and arresting 8
all persons who are committing any of said offences, as they have 9
received from the governor, or a judge of a court of record, or the 10
sheriff of the county, and also such orders as they there receive 11
from any two of the magistrates or officers before mentioned. 12

Officers, etc.,
guiltless, if
death ensues.
1750-1, 17, § 1.
1786, 38, § 1.
1835, 140, § 3.
R. S. 129, § 6.
1839, 54, § 1.
G. S. 164, § 6.
P. S. 206, § 6.
7 Allen, 541.

SECTION 6. If, by reason of the efforts made by any two or 1
more of said magistrates or officers or by their direction to disperse 2
such assembly, or to seize and secure the persons composing the 3
same who have refused to disperse, though the number remaining 4
may be less than twelve, any such person or any other person then 5
present is killed or wounded, the magistrates and officers, and all 6
persons acting by their order or under their directions, and all per- 7
sons acting under the provisions of the two preceding sections, 8
shall be held guiltless, and fully justified in law; and if any of said 9
magistrates or officers, or any person acting under or by the direc- 10
tion of any of the officers before mentioned, is killed or wounded, 11
all persons so assembled, and all other persons who, when com- 12
manded or required, refused to aid and assist said magistrates or 13
officers, shall be held answerable therefor. 14

Riotously de-
stroying dwell-
ing house, etc.
1750-1, 17, § 3.
1786, 38, § 3.
R. S. 129, § 7.
G. S. 164, § 7.
P. S. 206, § 7.

SECTION 7. If any of the persons so unlawfully assembled de- 1
molishes, pulls down or destroys, or begins to demolish, pull down 2
or destroy, a dwelling house or other building, or a ship or vessel, 3
he shall be punished by imprisonment in the state prison for not 4
more than five years or by a fine of not more than one thousand 5
dollars and imprisonment in jail for not more than two years, and 6
shall also be liable in an action of tort to any person injured. 7

Liability of
towns, etc., for
property
destroyed.
1839, 54, §§ 2, 3.
G. S. 164, §§ 8, 9.
P. S. 206, §§ 8, 9.

SECTION 8. If property of the value of fifty dollars or more 1
is destroyed or if property is injured to that amount by twelve or 2
more persons who are riotously or tumultuously assembled, the 3
city or town within which the property was situated shall, if the 4
owner of such property uses all reasonable diligence to prevent its 5
destruction or injury, and to procure the conviction of the offend- 6
ers, be liable to indemnify the owner thereof in an action of tort 7
to the amount of three-fourths of the value of the property de- 8
stroyed or of the amount of such injury thereto, and may recover 9
the same against any or all of the persons who destroyed or in- 10
jured such property. 11

1 SECTION 9. Whoever, when arrested upon a warrant for an al- Carrying
 2 leged crime and whoever, when arrested while committing a crime slung-shot, etc.
 3 or a breach or disturbance of the public peace, is armed with or 1850, 194, § 1.
 4 has on his person any slung-shot, metallic knuckles, billy or other 1852, 206, § 1.
 5 dangerous weapon, shall be punished by a fine of not more than 1859, 199.
 6 fifty dollars or by imprisonment for not more than one year. G. S. 164, § 10.
 P. S. 206, § 10.
 7 Allen, 583.
 103 Mass. 443.

1 SECTION 10. Whoever manufactures or causes to be manufact- Manufactur-
 2 ured, or sells or exposes for sale, an instrument or weapon of the ing, etc., slung-
 3 kind usually known as slung-shot, or metallic knuckles, shall be shot, etc.
 4 punished by a fine of not less than fifty nor more than two hundred 1850, 194, § 2.
 5 dollars, or by imprisonment for not more than six months. G. S. 164, § 11.
 P. S. 206, § 11.

1 SECTION 11. Whoever is concerned in causing or making a Bonfires.
 2 bonfire within ten rods of a house or building shall be punished by 1752-3, 18, § 3.
 3 a fine of not more than twenty dollars, or by imprisonment for not 1756-7, 14, § 3.
 4 more than one month. 1796, 82, § 11.
 1837, 177, § 1.
 G. S. 164, § 12. P. S. 206, § 12.

1 SECTION 12. Whoever, without reasonable cause, by outcry or False alarm of
 2 the ringing of bells, or otherwise, makes or circulates or causes to fire.
 3 be made or circulated a false alarm of fire shall be punished by a 1837, 177, § 2.
 4 fine of not more than one hundred dollars or by imprisonment for G. S. 164, § 13.
 5 not more than six months. P. S. 206, § 13.
 1897, 385.

CHAPTER 212.

OF CRIMES AGAINST CHASTITY, MORALITY, DECENCY AND GOOD ORDER.

1 SECTION 1. Whoever fraudulently and deceitfully entices or Abduction of
 2 takes away an unmarried female under the age of sixteen years from an unmarried
 3 her father's house or wherever else she may be found, without the female under
 4 consent of the parent, guardian or master, if any, under whose care sixteen for the
 5 and custody she is living, for the purpose of effecting a clandestine purpose of
 6 marriage of such female without such consent, shall be punished by marriage.
 7 imprisonment for not more than one year or by a fine of not more 1852, 254.
 8 than one thousand dollars, or by both such fine and imprisonment. G. S. 165, § 1.
 P. S. 207, § 1.
 152 Mass. 1.

1 SECTION 2. Whoever fraudulently and deceitfully entices or — of unmar-
 2 takes away an unmarried woman of a chaste life from her father's ried woman,
 3 house or wherever else she may be found, for the purpose of prosti- etc., for the
 4 tution or for the purpose of unlawful sexual intercourse at a house purpose of
 5 of ill fame or assignation or elsewhere, and whoever aids and assists prostitution.
 6 in such abduction for such purpose, shall be punished by imprison- 1845, 216, § 1.
 7 ment in the state prison for not more than three years or in jail for G. S. 165, § 2.
 8 not more than one year or by a fine of not more than one thousand P. S. 207, § 2.
 9 dollars, or by both such fine and imprisonment in jail. 1886, 329, § 1.
 1898, 444, § 1.
 12 Met. 94.
 131 Mass. 224.

1 SECTION 3. Whoever applies, administers to or causes to be Administering
 2 taken by a woman or girl any drug, matter or thing with intent drug.
 3 to stupefy or overpower her so as thereby to enable any person to 1886, 329, § 2.
 4 have unlawful sexual intercourse with her shall be punished by im-
 5 prisonment in the state prison, jail or house of correction for not

more than three years or by a fine of not more than one thousand dollars, or by both such fine and imprisonment in jail or the house of correction.

Enticing to unlawful intercourse.
1886, 329, § 3.
1898, 444, § 2.

SECTION 4. Whoever induces any person under the age of eighteen years of chaste life to have unlawful sexual intercourse shall be punished as provided in the preceding section.

Carnal knowledge of idiot.
1886, 329, § 4.

SECTION 5. Whoever has unlawful sexual intercourse with a female idiot or imbecile under circumstances which do not constitute rape shall, if he had reasonable cause to believe that she was an idiot or imbecile, be punished as provided in section three.

Penalty on owner of premises, etc.
1886, 329, § 5.

SECTION 6. Whoever, being the owner of a place or having or assisting in the management or control thereof, induces or knowingly suffers a female under the age of twenty-one years to resort to or be in or upon such place, for the purpose of unlawfully having sexual intercourse, shall be punished as provided in section three.

Evidence and limitation.
1886, 329, §§ 6, 7.

SECTION 7. A person shall not be convicted under any of the five preceding sections upon the evidence of one witness only, unless his testimony is corroborated in a material particular, and prosecution for a violation of any of said sections shall not be commenced more than one year after the commission of the crime.

Sending a female to house of ill fame.
1888, 311, § 1.

SECTION 8. Whoever knowingly sends, or aids or abets in sending, a woman or girl to enter as an inmate or a servant, a house of ill fame or other place resorted to for the purpose of prostitution shall for each offence be punished by a fine of not less than one hundred nor more than five hundred dollars, or by imprisonment for not less than three months nor more than two years. Whoever as proprietor or keeper of an intelligence or employment office, either personally or through an agent or employee, sends a woman or girl to enter as aforesaid a house of ill fame or other place resorted to for the purpose of prostitution, the character of which on reasonable inquiry could have been ascertained by him, shall for each offence be punished by a fine of not less than fifty nor more than two hundred dollars.

Detaining a female in house of ill fame.
1888, 311, § 2.

SECTION 9. Whoever, for any length of time, unlawfully detains or attempts to detain, or aids or abets in unlawfully detaining or attempting to detain, or administers or aids or abets in administering any drug for the purpose of detaining, a woman or girl in a house of ill fame or other place resorted to for the purpose of prostitution, shall for each offence be punished by imprisonment in the state prison for not more than five years or in the house of correction for not less than one year nor more than three years or by a fine of not less than one hundred nor more than five hundred dollars.

Adultery.
B. L. 94, § 9.
C. L. 15, § 9.
1894-5, 3, § 1, 2.
1762-3, 23.
1784, 40, § 1.
R. S. 130, § 1.
G. S. 165, § 3.
P. S. 207, § 3.

SECTION 10. A married man who has sexual intercourse with a woman not his wife, an unmarried man who has sexual intercourse with a married woman and a married woman who has sexual intercourse with a man not her husband shall be guilty of adultery and shall be punished by imprisonment in the state prison

6 for not more than three years or in the jail for not more than two
 7 years, or by a fine of not more than five hundred dollars.

97 Mass. 59.

147 Mass. 294.

157 Mass. 415.

163 Mass. 499.

21 Pick. 509.
 2 Met. 190.
 5 Met. 535.
 2 Cush. 551.
 6 Cush. 78.

1 SECTION 11. Whoever, having a former husband or wife living,
 2 marries another person or continues to cohabit with a second hus-
 3 band or wife in this commonwealth shall be guilty of polygamy.
 4 and be punished by imprisonment in the state prison for not more
 5 than five years or in jail for not more than three years or by a fine
 6 of not more than five hundred dollars; but the provisions of this
 7 section shall not apply to a person whose husband or wife has con-
 8 tinually remained beyond sea, or has voluntarily withdrawn from
 9 the other and remained absent, for seven consecutive years, the
 10 party marrying again not knowing the other to be living within that
 11 time, nor to a person who has been legally divorced from the bonds
 12 of matrimony and who is not the guilty cause of such divorce, nor
 13 to any person who has been legally divorced after the expiration
 14 of two years from the time of the entry of the absolute decree of
 15 divorce.

Polygamy.
 1694-5, 3, §§ 3-5.
 1698, 19.
 1784, 40, § 2.
 R. S. 130, §§ 2, 3.
 G. S. 165, §§ 4, 5.
 P. S. 207, §§ 4, 5.
 1 Pick. 130.
 2 Cush. 533.
 4 Cush. 49.
 6 Allen, 592.
 10 Allen, 196.
 11 Allen, 23.
 12 Allen, 133.
 105 Mass. 464.
 113 Mass. 458.
 121 Mass. 47.
 126 Mass. 24.
 140 Mass. 296.
 158 Mass. 81.
 163 Mass. 453.

1 SECTION 12. A man and woman who, not being married to each
 2 other, lewdly and lasciviously associate and cohabit together, or a
 3 man or woman, married or unmarried, who is guilty of open and
 4 gross lewdness and lascivious behavior, shall be punished by im-
 5 prisonment in the state prison for not more than three years or in
 6 jail for not more than two years or by a fine of not more than three
 7 hundred dollars.

128 Mass. 52.

159 Mass. 61.

Lascivious
 cohabitation
 and lewdness.
 1784, 40, § 3.
 R. S. 130, § 4.
 G. S. 165, § 6.
 P. S. 207, § 6.
 4 Cush. 49.
 10 Mass. 153.
 127 Mass. 459.

1 SECTION 13. Persons within the degrees of consanguinity within
 2 which marriages are prohibited or declared by law to be incest-
 3 uous and void, who intermarry or have sexual intercourse with each
 4 other, shall be punished by imprisonment in the state prison for not
 5 more than twenty years or in jail for not more than three years.

Incest.
 1695-6, 2, § 2.
 R. S. 130, § 13.
 G. S. 165, § 7.
 P. S. 207, § 7.
 19 Met. 451.

1 SECTION 14. Whoever commits fornication shall be punished by
 2 imprisonment for not more than three months or by a fine of not
 3 more than thirty dollars. R. S. 130, § 5. G. S. 165, § 8. P. S. 207, § 8.

Fornication.
 C. L. 54, §§ 4, 5.
 1692-3, 18, § 5.
 1785, 66, § 1.

1 SECTION 15. Whoever, with intent to procure the miscarriage
 2 of a woman, unlawfully administers to her, or advises or prescribes
 3 for her, or causes any poison, drug, medicine or other noxious thing
 4 to be taken by her or, with the like intent, unlawfully uses any
 5 instrument or other means whatever, or, with like intent, aids or
 6 assists therein, shall, if she dies in consequence thereof, be pun-
 7 ished by imprisonment in the state prison for not less than five nor
 8 more than twenty years; and, if she does not die in consequence
 9 thereof, by imprisonment in the state prison for not more than seven
 10 years and by a fine of not more than two thousand dollars.

157 Mass. 519.

165 Mass. 13, 59.

Unlawful at-
 tempt, etc.,
 to procure
 miscarriage.
 1845, 27.
 G. S. 165, § 9.
 P. S. 207, § 9.
 11 Gray, 85.
 14 Gray, 419.
 15 Gray, 187.
 13 Allen, 554.
 108 Mass. 461.
 116 Mass. 47,
 343.
 132 Mass. 261.
 136 Mass. 429.
 155 Mass. 274.

1 SECTION 16. Whoever knowingly advertises, prints, publishes,
 2 distributes or circulates, or knowingly causes to be advertised,
 3 printed, published, distributed or circulated, any pamphlet, printed
 4 paper, book, newspaper, notice, advertisement or reference, con-

Advertising,
 etc., notice,
 etc., of means
 to procure
 abortion.
 1847, 83.

G. S. 165, § 10.
P. S. 207, § 10.

taining words or language giving or conveying any notice, hint or reference to any person, or to the name of any person, real or fictitious, from whom, or to any place, house, shop or office where, any poison, drug, mixture, preparation, medicine or noxious thing, or any instrument or means whatever, or any advice, direction, information or knowledge, may be obtained for the purpose of causing or procuring the miscarriage of a woman pregnant with child shall be punished by imprisonment in the state prison or jail for not more than three years or by a fine of not more than one thousand dollars.

Concealment
by mother of
death of
bastard.
1696, 11.
1784, 42, § 2.
R. S. 130, § 6.
G. S. 165, § 11.
P. S. 207, § 11.

SECTION 17. A woman who conceals the death of issue of her body, which if born alive would be a bastard, so that it cannot be ascertained whether it was born alive or, if born alive, whether it was murdered, shall be punished by a fine of not more than one hundred dollars or by imprisonment for not more than one year.

Joinder of
murder and
concealment.
1784, 42, § 3.
R. S. 130, § 7.
G. S. 165, § 12.
P. S. 207, § 12.

SECTION 18. A woman indicted for the murder of her infant bastard child may also be charged in the same indictment with the crime described in the preceding section; and if she is acquitted of murder, she may be convicted of the concealment.

Keeping house
of ill fame.
C. L. 208, § 2.
1720-1, 7, § 3.
1793, 59, § 8.

SECTION 19. Whoever keeps a house of ill fame which is resorted to for the purpose of prostitution or lewdness shall be punished by imprisonment for not more than two years.

R. S. 130, § 8.
1849, 84.
1855, 405.
G. S. 165, § 13.

P. S. 207, § 13.
3 Pick. 26.
1 Met. 151.
2 Gray, 356.

11 Gray, 48.
1 Allen, 7.
12 Allen, 177.
124 Mass. 26.
132 Mass. 1.
150 Mass. 314.
165 Mass. 588.

Sale of obscene
literature.
1711-12, 6, § 19.
R. S. 130, §§ 10,
12.
G. S. 165, §§ 15,
17.
1862, 168, §§ 1, 3.
1880, 97.
P. S. 207, §§ 15,
16.
1830, 70.
1894, 433.
1895, 162.
130 Mass. 382.
164 Mass. 162.

SECTION 20. Whoever imports, prints, publishes, sells or distributes a book, pamphlet, ballad, printed paper or other thing containing obscene, indecent or impure language, or manifestly tending to corrupt the morals of youth, or an obscene, indecent or impure print, picture, figure or description, manifestly tending to corrupt the morals of youth, or introduces into a family, school or place of education, or buys, procures, receives or has in his possession any such book, pamphlet, ballad, printed paper or other thing, either for the purpose of sale, exhibition, loan or circulation or with intent to introduce the same into a family, school or place of education shall be punished by imprisonment for not more than two years and by a fine of not less than one hundred nor more than one thousand dollars, one-half of which shall be paid to the complainant.

— of criminal
literature.
1885, 305.

SECTION 21. Whoever sells, lends, gives away or has in his possession with intent to sell, lend, give away or distribute or offers to sell, lend, give away or distribute to a minor a book, pamphlet, magazine, newspaper or other printed paper which is devoted to the publication or principally made up of criminal news, police reports or accounts of criminal deeds, or pictures and stories of lust or crime; or exhibits upon the street or highway or in any other place within the view or which may be within the view of a minor, or employs a minor to sell, lend, give away or distribute or, having the custody or control of a minor, permits him to sell, lend, give away or distribute any such book, pamphlet, magazine, newspaper or printed paper, shall be punished by imprisonment for not more

13 than two years or by a fine of not less than one hundred nor more
14 than one thousand dollars.

1 SECTION 22. Whoever, as owner, manager, director, agent or
2 in any other capacity, uses or causes or permits to be used, in con-
3 nection with any show or entertainment, public or private, a pho-
4 nograph or other contrivance, instrument or device, which utters or
5 gives forth any profane, obscene or impure language, shall be pun-
6 ished by imprisonment for not more than one year or by a fine of
7 not more than five hundred dollars, or by both such fine and im-
8 prisonment.

Immoral enter-
tainments.
1896, 339, § 1.

1 SECTION 23. Whoever, as owner, manager, director, agent or in
2 any other capacity, prepares, advertises, gives, presents or partici-
3 pates in any obscene, indecent, immoral or impure show or enter-
4 tainment, or in any show or entertainment manifestly tending to
5 corrupt the morals of youth, shall be punished as provided in the
6 preceding section.

Same subject.
1896, 339, § 2.

Repeal
Substitute
1910 c. 367

1 SECTION 24. Whoever exhibits for hire a minor or insane per-
2 son who is deformed or a person who has an appearance of deform-
3 ity produced by artificial means shall be punished by a fine of not
4 more than five hundred dollars.

Exhibition of
deformities.
1884, 99.

1 SECTION 25. Whoever commits the abominable and detestable
2 crime against nature, either with mankind or with a beast, shall be
3 punished by imprisonment in the state prison for not more than
4 twenty years.

R. S. 130, § 14.

G. S. 165, § 18.

P. S. 207, § 18.

Sodomy and
buggery.
B. L. 94, §§ 7, 8.
C. L. 14, §§ 7, 8.
1697, 19.
1784, 46, § 1.
1804, 133.

1 SECTION 26. Whoever sells, lends, gives away, exhibits or
2 offers to sell, lend or give away an instrument or other article in-
3 tended to be used for self-abuse, or any drug, medicine, instrument
4 or article whatever for the prevention of conception or for causing
5 unlawful abortion, or advertises the same, or writes, prints or causes
6 to be written or printed a card, circular, book, pamphlet, adver-
7 tisement or notice of any kind stating when, where, how, of whom
8 or by what means such article can be purchased or obtained,
9 or manufactures or makes any such article, shall be punished by
10 imprisonment in the state prison for not more than five years or in
11 jail or the house of correction for not more than three years or by
12 a fine of not less than one hundred nor more than one thousand
13 dollars.

Other offences
against
decency.
1879, 150, § 1.
P. S. 207, § 17.

1 SECTION 27. Whoever commits any unnatural and lascivious
2 act with another person shall be punished by a fine of not less than
3 one hundred nor more than one thousand dollars or by imprison-
4 ment in the state prison for not more than five years or in jail or
5 the house of correction for not more than three years.

Unnatural and
lascivious acts.
1887, 436, § 1.
160 Mass. 536.

1 SECTION 28. Whoever wilfully blasphemes the holy name of
2 God by denying, cursing or contumeliously reproaching God, his
3 creation, government or final judging of the world, or by cursing
4 or contumeliously reproaching Jesus Christ or the Holy Ghost or
5 by cursing or contumeliously reproaching or exposing to con-

Blasphemy.
B. L. 94, § 3.
C. L. 14, § 3.
1697, 20.
1782, 8.
R. S. 130, § 15.
G. S. 165, § 19.
P. S. 207, § 19.
20 Pick. 206.

tempt and ridicule, the holy word of God contained in the holy scriptures shall be punished by imprisonment in the state prison for not more than two years or in jail for not more than one year or by a fine of not more than three hundred dollars, and may also be bound to good behavior.

Profane cursing and swearing.
C. L. 145, §§ 1, 2.
1692-3, 18, § 1.
1693, 9.
1733-4, 13.
1746-7, 17, § 1.
1798, 33, §§ 1, 3.

SECTION 29. Whoever, having arrived at the age of discretion, profanely curses or swears, shall be punished by a fine of not more than five dollars nor less than one dollar; but no prosecution shall be commenced after twenty days from the commission of the offence.

R. S. 130, § 16.

G. S. 165, § 20.

P. S. 207, § 20.

Disturbing religious worship.
C. L. 250, § 2.
1791, 58, § 8.
R. S. 130, § 17.
G. S. 165, § 21.

SECTION 30. Whoever wilfully interrupts or disturbs an assembly of people met for the worship of God shall be punished by imprisonment for not more than thirty days or by a fine of not more than fifty dollars.

P. S. 207, § 21.

2 Mass. 163.

Peddling, gaming, etc., near camp-meeting.
1838, 143.
G. S. 165, § 22.
1867, 39.
1878, 92.
1879, 56.
P. S. 207, § 22.
132 Mass. 542.

SECTION 31. Whoever, during the time of holding a camp or field meeting for religious purposes, and within one mile of the place thereof, hawks or peddles goods, wares or merchandise, or establishes or maintains a tent, booth or building for vending provisions or refreshments, or furnishes shelter and food for or has the care of horses for pay, without permission from the authorities or officers having the charge or direction of such meeting, or engages in gaming or horse racing, or exhibits or offers to exhibit any show or play, shall forfeit for each offence not more than twenty dollars: *provided*, that the time of holding such meeting shall not exceed thirty consecutive days in any one year: and that a person having a regular, usual and established place of business within such limits need not suspend his business.

Disturbance of school or public meeting.
1849, 59.
G. S. 165, § 23.
P. S. 207, § 23.
1 Gray, 476.

SECTION 32. Whoever wilfully interrupts or disturbs a school or other assembly of people met for a lawful purpose shall be punished by imprisonment for not more than thirty days, or by a fine of not more than fifty dollars.

— of public libraries.
1885, 225.

SECTION 33. Whoever wilfully disturbs persons assembled in a public library, or a reading room connected therewith, by making a noise or in any other manner during the time when such library or reading room is open to the public shall be punished by imprisonment for not more than thirty days or by a fine of not more than fifty dollars.

— of funeral.
1851, 133.
G. S. 165, § 24.
P. S. 207, § 24.
1 Gray, 480.

SECTION 34. Whoever wilfully interrupts or by fast driving or otherwise in any way disturbs a funeral assembly or procession shall be punished by imprisonment for not more than thirty days or by a fine of not more than fifty dollars.

Disorderly conduct in public conveyances.
1883, 102.

SECTION 35. Whoever, in or upon a railroad carriage, steamboat or other public conveyance, is disorderly, or disturbs or annoys travellers in or upon the same by profane, obscene or indecent language, or by indecent behavior, shall be punished by imprisonment for not more than thirty days or by a fine of not more than fifty dollars.

1 SECTION 36. Whoever is found in a state of intoxication in a
 2 public place, or is found in any place in a state of intoxication com-
 3 mitting a breach of the peace or disturbing others by noise, may
 4 be arrested without a warrant by a sheriff, deputy sheriff, constable,
 5 watchman or police officer, and kept in custody in a suitable place
 6 until he has recovered from his intoxication.

173 Mass. 52.

Arrest for
 drunkenness.
 1855, 215, § 23.
 G. S. 80, § 40.
 1869, 415, § 42.
 1876, 17.
 P. S. 207, § 25.
 1891, 427, § 1.
 123 Mass. 436.
 141 Mass. 102.

1 SECTION 37. Whoever arrests a person for drunkenness shall
 2 make a complaint against him therefor. A person so arrested may
 3 make a statement in writing, addressed to the court or trial justice
 4 having jurisdiction of his offence, giving his name and address, set-
 5 ting forth what persons, if any, are dependent upon him for sup-
 6 port, his place of employment, if any, and whether he has been
 7 previously arrested for drunkenness within the preceding twelve
 8 months and requesting to be released from custody and may deliver
 9 it to the officer in charge of the place in which he is confined who
 10 shall indorse thereon the name of the arresting officer, and, if the
 11 arrest was made within the jurisdiction of a court having a proba-
 12 tion officer, shall transmit it to him. Said probation officer shall
 13 forthwith inquire into the truth thereof, and investigate the record
 14 of said person as to previous similar offences, and shall indorse
 15 thereon and sign the result of his investigation, for the use of the
 16 court having jurisdiction of the case, which may thereupon direct
 17 that such person be released from arrest without arraignment. If
 18 the arrest is made within the jurisdiction of a trial justice the offi-
 19 cer in charge of the place of custody shall send the prisoner to the
 20 trial justice and at the same time transmit the statement to him,
 21 for his use in the trial and disposition of the case. The officer in
 22 charge of the place of custody in which the person arrested is con-
 23 fined shall inform him of his right to make such statement and re-
 24 quest for release. An officer making an arrest under the authority
 25 of the preceding section shall not be liable for illegal arrest or
 26 imprisonment if the person arrested is released at his request, as
 27 herein provided.

Release from
 arrest for
 drunkenness.
 1891, 427, §§ 2, 3.
 1893, 414.
 100 Mass. 316.
 125 Mass. 138.
 150 Mass. 243.
 157 Mass. 556.

1 SECTION 38. A full record shall be kept by every court or trial
 2 justice of each case in which a person is released, as aforesaid, with
 3 the statement made by him. If a person is so released by any
 4 municipal court in Boston, or within their jurisdiction, a certified
 5 copy of said statement and the name of the officer making the arrest
 6 shall be sent by such court to the clerk of the municipal court of
 7 the city of Boston for criminal business.

Record of per-
 sons released.
 1891, 427, § 4.

1 SECTION 39. If a male is convicted of drunkenness by the vol-
 2 untary use of intoxicating liquor, he may be punished by imprison-
 3 ment in jail or in any place provided by law for common drunkards
 4 for not more than one year; or by imprisonment in the Massachu-
 5 setts reformatory, as provided in section twenty-nine of chapter
 6 two hundred and twenty. If a female is so convicted, she may be
 7 punished by imprisonment in jail or in any place provided by law
 8 for common drunkards for not more than one year or in the reform-
 9 atory prison for women for not more than two years. If the per-
 10 son so convicted shall satisfy the court or trial justice, by his own
 11 statement or otherwise, that he has not been arrested for drunk-

Punishment of
 drunkenness.
 C. L. 80, § 4.
 1692-3, 18, § 2.
 1693, 9.
 1733-4, 13.
 R. S. 130, § 18.
 1860, 166.
 G. S. 165, § 25.
 1866, 452.
 1872, 301.
 1879, 229, § 1.
 1880, 221, §§ 1, 2;
 247, § 1.
 1881, 276.
 P. S. 207, §§ 26-
 28.
 1885, 365, § 2;
 375.
 1886, 323, § 1.

1888, 377.
1891, 427, § 5.
1892, 303.
1893, 447.
116 Mass. 340.
157 Mass. 471.

enness twice before within the preceding twelve months, or that, 12
having been so arrested, he has been tried and acquitted in one of the 13
cases, his case may be placed on file, or he may be punished by a fine 14
of not more than fifteen dollars, and upon non-payment thereof he 15
shall be committed to the jail, or house of correction, or to the work- 16
house, if there is any which has a criminal department in the city 17
or town in which the offence was committed, until the fine is paid, 18
but not more than thirty days. If a male is convicted of drunk- 19
enness three times within twelve months he may be sentenced to 20
the Massachusetts reformatory. 21

Duties of prob-
ation officers.
1891, 427, §§ 6, 7.

SECTION 40. Probation officers shall assist the courts appointing 1
them, by obtaining and furnishing information relative to previous 2
arrests, convictions and imprisonments for drunkenness, and such 3
other facts as the court orders relative to persons accused of drunk- 4
enness. They shall keep a full record, well indexed, of each such 5
case which they investigate, in such form as the court orders. Pro- 6
bation officers of the municipal courts in Boston shall furnish a 7
copy of the record in each such case to the municipal court of 8
the city of Boston, which shall cause all records and statements 9
received by it to be so consolidated and kept that they may be 10
readily consulted, and for such purpose may employ the neces- 11
sary clerical assistance. The compensation for such service, which 12
shall be fixed by the court, and such other necessary expenses as 13
the court shall incur in complying with the provisions of this sec- 14
tion shall be paid by the county of Suffolk, upon vouchers approved 15
by the court. 16

Records open
to inspection.
1891, 427, § 7.

SECTION 41. Records and statements made under the provisions 1
of the four preceding sections shall be at all times open to the 2
police officials of the cities and towns of this commonwealth. The 3
board of police of Boston, city marshals and chiefs of police of 4
other cities and towns, keepers of jails and masters of houses of 5
correction shall furnish to each other and to probation officers, and 6
probation officers shall on application furnish to each other, all in- 7
formation in their possession relative to persons whose cases are 8
under investigation. 9

Opium resorts.
1885, 73.

SECTION 42. Whoever opens or maintains a place to be resorted 1
to by other persons, in which opium or any of its preparations is 2
sold or given away to be smoked at such place, whoever at such 3
place sells or gives away opium or any of its preparations to be 4
there smoked or otherwise used and whoever visits or resorts to 5
any such place for the purpose of smoking opium or any of its 6
preparations shall be punished by a fine of not more than five hun- 7
dred dollars or by imprisonment for not more than six months, or 8
by both such fine and imprisonment. 9

Search of sus-
pected opium
resorts.
1895, 194, §§ 1, 2.
173 Mass. 477.

SECTION 43. If a person makes oath before a police, district or 1
municipal court or trial justice that he believes or has probable 2
cause to believe that any place, house, building or tenement within 3
the jurisdiction of such court or justice is used or resorted to for 4
the purpose of smoking opium or any of its preparations, or for the 5
purpose of selling or giving away opium or any of its preparations 6

7 to be smoked at such place, house, building or tenement, and that
 8 persons resort thereto for such purposes, such court or trial justice,
 9 whether the names of the persons last mentioned are known or
 10 unknown to the complainant, shall, if satisfied that there is probable
 11 cause therefor, issue a warrant commanding the sheriff or his deputy
 12 or any constable or police officer to enter such place, house, build-
 13 ing or tenement and there to arrest the keepers thereof, and all
 14 persons there present, whether smoking or not, if the imple-
 15 ments for smoking opium or any of its preparations are there
 16 found, and seize all the opium or preparations thereof and all the
 17 implements for smoking the same and all the furniture, fixtures and
 18 other personal property there found, and to keep said persons,
 19 opium, preparations thereof, implements, furniture, fixtures and
 20 property so that they may be produced before a court or magis-
 21 trate, to be dealt with according to law. Whoever is found so
 22 present or so smoking shall be punished by a fine of not more than
 23 one hundred dollars for each offence. The provisions of sections
 24 three to eight, inclusive, of chapter two hundred and seventeen rela-
 25 tive to articles seized under clause eleven of section one of said
 26 chapter shall apply to all opium, preparations thereof, implements,
 27 furniture, fixtures and property so seized.

1 SECTION 44. An officer who makes a search under the provi-
 2 sions of the preceding section shall not be permitted to use any
 3 evidence of any crime, except that of opium smoking, which he
 4 may discover, in making further prosecutions against the persons
 5 whose premises are searched.

Evidence of
 other crimes
 not to be used.
 1895, 194, § 3.

1 SECTION 45. Whoever unreasonably neglects to provide for the
 2 support of his wife or minor child shall be punished by a fine of not
 3 more than twenty dollars or by imprisonment for not more than
 4 six months. All fines imposed under the provisions of this section
 5 may, in the discretion of the court, be paid in whole or in part to
 6 the city, town, corporation, society or person actually supporting
 7 such wife or minor child at the time of making the complaint.
 8 Proof of neglect to provide for the support of a wife or minor
 9 child as aforesaid shall be prima facie evidence that such neglect is
 10 unreasonable.

Non-support of
 wife or child.
 1882, 270, § 4.
 1884, 210.
 1885, 176.
 1893, 262.
 139 Mass. 435.
 136 Mass. 485.
 157 Mass. 73.
 165 Mass. 356.

1 SECTION 46. Rogues and vagabonds, persons who use any
 2 juggling or unlawful games or plays, common pipers and fiddlers,
 3 stubborn children, runaways, common drunkards, common night
 4 walkers both male and female, pilferers, lewd, wanton and lascivi-
 5 ous persons in speech or behavior, common railers and brawlers,
 6 persons who neglect their calling or employment, misspend what
 7 they earn and do not provide for themselves or for the support of
 8 their families, and all other idle and disorderly persons, including
 9 therein those persons who neglect all lawful business and habitually
 10 misspend their time by frequenting houses of ill fame, gaming
 11 houses or tippling shops, may be punished by imprisonment in the
 12 Massachusetts reformatory or at the state farm or for not more
 13 than six months in the house of correction or workhouse in the
 14 city or town in which the offender is convicted, or in the work-
 15 house, if any, in the city or town in which the offender has a legal

Rogues, vaga-
 bonds, etc.
 C. L. 153, § 1.
 1699-1700, § 2.
 1700-70, 19.
 1787, 54, § 2.
 1894, 151, § 2.
 R. S. 143, § 5.
 1897, 217.
 1896, 185.
 G. S. 165, § 28.
 1896, 235.
 1874, 385, § 21.
 1876, 118.
 1878, 270, § 2.
 1880, 114, 257.
 P. S. 207, § 29.
 1884, 265, § 1.
 1885, 365, § 1.
 1886, 323, § 1.
 1898, 443, § 1.
 10 Met. 217.
 11 Cnsh. 47.
 14 Gray, 397.
 1 Allen, 6.
 4 Allen, 313.
 5 Allen, 511.

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13 Allen, 550.
99 Mass. 497.
112 Mass. 285.
141 Mass. 78.
170 Mass. 192.

settlement, if such town is in the county. A female offender under the provisions of this section may in the discretion of the court be punished by imprisonment in the reformatory prison for women for not more than two years.

Disorderly person arrested in night time.
1834, 151, § 5.
R. S. 143, § 7.
G. S. 165, § 33.
P. S. 207, § 34.

SECTION 47. Whoever is found in a street, highway or other public place in the night time, committing any offence or disorder mentioned in the preceding section, may be apprehended by a sheriff, deputy sheriff, constable, police officer or watchman, or by any other person by the order of a magistrate or any of said officers, without a warrant and be kept in custody for not more than twenty-four hours, Sunday or a legal holiday excepted; and at or before the expiration of such time he shall be taken before a police, district or municipal court or trial justice and proceeded against, as provided in the preceding section, or discharged, as such court or justice shall determine.

Conditional sentence.
1834, 151, § 3.
R. S. 143, § 6.
1837, 157.
1851, 346.
G. S. 165, § 29.
P. S. 207, § 30.

SECTION 48. A person who is convicted by a police, district or municipal court or trial justice of an offence mentioned in section forty-six may, instead of the punishment therein mentioned, be punished by a fine of not more than twenty dollars, either with or without a condition that, if it is not paid within a time specified, such person shall be punished as provided in said section; and such conditional sentence shall be carried into execution according to the provisions of section nine of chapter two hundred and twenty.

Master of workhouse, etc., to receive persons committed.
1833-1700, S, § 3.
1787, 54, § 3.
1834, 151, § 3.
R. S. 87, § 41;
143, § 6.
G. S. 165, § 30.
P. S. 207, § 31.

SECTION 49. The master, keeper, director or overseer of a workhouse to which a person has been committed under the provisions of the three preceding sections shall receive all persons so committed, set them to work if they are able and employ and govern them in the manner provided by law and by the rules and orders established for that purpose; and the city or town in which such house is situated may recover the balance of the expense of the support of any such person over and above the amount of his labor from the person thus committed, or from any kindred or city or town which is liable by law for his support, if he is a pauper, in like manner as if he had been committed to the house of correction for the same offence.

Repetition of offence a breach of recognizance.
1834, 151, § 3.
R. S. 143, § 8.
G. S. 165, § 31.
P. S. 207, § 32.

SECTION 50. If a person who has been convicted under the provisions of section forty-six appeals from the sentence, the commission of any like offence by him before judgment on the appeal shall be a breach of the condition of the recognizance, if any was taken upon allowing the appeal.

Discharge of defendant on recognizance.
R. S. 143, § 9.
G. S. 165, § 32.
1866, 235, § 5.
P. S. 207, § 33.

SECTION 51. When a person is brought before a magistrate upon a charge of any offence mentioned in sections forty-six, fifty-nine and sixty-one, such magistrate, or the court before which the case may be carried by appeal, may at any stage of the proceedings direct the defendant or appellant to be discharged, upon his entering into a recognizance with sufficient sureties, in such sum as the magistrate or court orders, for his good behavior for not less than six months nor more than two years, and paying the expenses

9 of prosecution or such part thereof as the magistrate or court
10 orders.

1 SECTION 52. A parent or other person who employs a minor
2 under the age of fifteen years in begging or who, having the care
3 or custody of such minor, permits him to engage in such employ-
4 ment shall be punished by a fine of not more than two hundred
5 dollars or by imprisonment for not more than six months.

Begging by
children.
1887, 422.

1 SECTION 53. Whoever remains in a street or elsewhere in a city
2 or town in wilful violation of an ordinance or by-law and whoever
3 in a street or other public place accosts or addresses another per-
4 son with profane or obscene language in wilful violation of an ordi-
5 nance or by-law may be arrested by any officer authorized to serve
6 criminal process in the place where the offence is committed and
7 kept in custody until he can be taken before a court which has juris-
8 diction of such offence; and if his name is unknown to the officer
9 who makes the arrest, he may be arrested without a warrant.

Arrest without
warrant for
violation of
ordinances.
1878, 181.
P. S. 207, § 35.

1 SECTION 54. If a person who has been discharged under the
2 provisions of section one hundred and nineteen of chapter two
3 hundred and twenty-five is afterward convicted of any offence men-
4 tioned in section forty-six, which was committed after the former
5 conviction, either in the same or a different county, he may be
6 sentenced to hard labor in the house of correction or workhouse
7 for not more than one year.

Conviction
after discharge
on former
conviction.
1834, 151, § 8.
R. S. 143, § 13.
G. S. 165, § 34.
P. S. 207, § 36.

1 SECTION 55. If it is alleged in a complaint charging a person
2 with being a common night walker, and is proved at the trial that
3 such person has been twice before convicted of the same offence,
4 such person may, upon conviction, be sentenced to the house of
5 correction, or to the workhouse, if any, in the city or town, for
6 not more than five years.

Night walking,
third convic-
tion.
1855, 69, § 1.
G. S. 165, § 35.
P. S. 207, § 37.

1 SECTION 56. Whoever, not being a minor under seventeen
2 years of age, a blind person or a person asking charity within his
3 own city or town, roves about from place to place begging, or
4 living without labor or visible means of support, shall be deemed a
5 tramp. An act of begging or soliciting alms, whether of money,
6 food, lodging or clothing, by a person having no residence in the
7 town within which the act is committed, or the riding upon a freight
8 train of a railroad, whether within or without any car or part
9 thereof, without a permit from the proper officers or employees of
10 such railroad or train, shall be prima facie evidence that such per-
11 son is a tramp.

Tramps.
1880, 257, §§ 2,
3, 7.
P. S. 207, § 38.
1896, 385.

1 SECTION 57. A tramp shall be punished by imprisonment in the
2 house of correction for not less than six months nor more than two
3 years, or by imprisonment at the state farm; and if he enters a
4 dwelling house or other building without the consent of the owner
5 or occupant thereof, or wilfully or maliciously injures or threatens
6 to injure any person therein, or threatens to do any injury to any
7 person, or to the property of another, or is found carrying a firearm
8 or other dangerous weapon, he shall be punished by imprisonment

Punishment of
tramps.
1880, 257, §§ 1, 4.
P. S. 207, §§ 39,
40.

in the house of correction for not less than one year nor more 9
than five years, or at the state farm. 10

Arrest of
tramps.

1880, 257, §§ 5, 6.
P. S. 207, § 41.

SECTION 58. A sheriff, deputy sheriff, constable or police officer, 1
upon view or information of an offence described in the two pre- 2
ceding sections, may, without a warrant, arrest the offender, and 3
make complaint against him therefor: and the district police shall 4
make such arrests and complaints. Mayors of cities and selectmen 5
of towns shall appoint special police officers who shall also make 6
such arrests and complaints in their respective cities and towns. 7

Vagrants.

1866, 235, §§ 1, 3.
P. S. 207, § 42.
1884, 258, § 1.
1885, 365, § 1.
1886, 323, § 1.
1898, 443, § 1.
13 Allen, 550.
147 Mass. 399.
[1 Op. A. G.
459.]

SECTION 59. Idle persons who, not having visible means of 1
support, live without lawful employment: persons wandering 2
abroad and visiting tippling shops or houses of ill fame, or lodging 3
in groceries, outhouses, market places, sheds, barns or in the open 4
air, and not giving a good account of themselves: persons wan- 5
dering abroad and begging, or who go about from door to door, or 6
place themselves in the streets, highways, passages or other public 7
places to beg or receive alms, and who do not come within the 8
description of tramps as contained in section fifty-six, shall be 9
deemed vagrants, and may be sentenced to the Massachusetts re- 10
formatory or state farm or shall be punished by imprisonment for 11
not more than six months in the house of correction or workhouse. 12

—arrest of.

1866, 235, § 2.
P. S. 207, § 43.

SECTION 60. Sheriffs, deputy sheriffs, constables and police 1
officers, acting on the request of any person or upon their own 2
information or belief, shall without a warrant, arrest and carry 3
any such vagrant before a police, district or municipal court or 4
trial justice for the purpose of an examination, and shall make 5
complaint against him. 6

Vagabonds.

1866, 235, § 4.
P. S. 207, § 44.

SECTION 61. A person who is known to be a pickpocket, thief 1
or burglar and having no visible or lawful means of support, if 2
found prowling around any steamboat landing, railroad depot, bank- 3
ing institution, broker's office, place of public amusement, auction 4
room, store, shop, crowded thoroughfare, car or omnibus, or at 5
any public gathering or assembly, shall be deemed a vagabond, 6
and shall be punished by imprisonment in the house of correction 7
for not less than four nor more than twelve months. 8

—arrest of.

1866, 235, § 4.
P. S. 207, § 45.

SECTION 62. Sheriffs, deputy sheriffs, constables and police offi- 1
cers shall take any such vagabond into custody without a warrant 2
and shall, within twenty-four hours after such arrest, Sundays and 3
legal holidays excepted, take him before a police, district or munic- 4
ipal court or trial justice, and shall make complaint against him. 5

Attachment of
dead body.

1811, 102, § 2.
R. S. 14, § 81.
G. S. 165, § 36.
P. S. 207, § 46.

SECTION 63. A sheriff, deputy sheriff or constable who takes 1
the body of a deceased person on mesne process or execution shall 2
be punished by a fine of not more than five hundred dollars or by 3
imprisonment for not more than six months. 4

Violation of
sepulture.

1814, 175.
1830, 57, §§ 1, 2.
R. S. 130, § 19.

SECTION 64. Whoever, not being authorized by the board of 1
health, overseers of the poor, directors of a workhouse, or mayor 2
and aldermen or selectmen of a city or town, or by the institutions 3

4 commissioner or overseers of the poor of the city of Boston, wil-
5 fully digs up, disinters, removes or conveys away a human body,
6 or the remains thereof, or knowingly aids in such disinterment, re-
7 moval or conveying away, and whoever is accessory thereto either
8 before or after the fact, shall be punished by imprisonment in the
9 state prison or jail for not more than three years or by a fine of
10 not more than two thousand dollars.

G. S. 165, § 37.
1879, 16.
P. S. 207, § 47.
8 Pick. 370.
10 Pick. 37.
19 Pick. 304.

1 SECTION 65. Whoever buys or sells, or has in his possession
2 for the purpose of buying, selling or trafficking in, the dead body
3 of a human being shall be punished by a fine of not less than fifty
4 nor more than five hundred dollars or by imprisonment for not less
5 than three months nor more than three years.

Buying or
selling dead
body.
1855, 323, §§ 2, 3.
G. S. 165, § 38.
P. S. 207, § 48.

1 SECTION 66. Whoever wilfully destroys, mutilates, defaces,
2 injures or removes a tomb, monument, gravestone or other struct-
3 ure or thing which is placed or designed for a memorial of the
4 dead, or a fence, railing, curb or other thing which is intended for
5 the protection or ornament of a tomb, monument, gravestone or
6 other structure before mentioned or of an enclosure for the burial
7 of the dead, or wilfully destroys, mutilates, removes, cuts, breaks
8 or injures a tree, shrub or plant placed or being within such en-
9 closure, or wantonly or maliciously disturbs the contents of a tomb
10 or a grave, shall be punished by a fine of not more than one thou-
11 sand dollars or by imprisonment in the jail or house of correction
12 for not more than three years.

Injuring or
defacing
tombs, etc.
1834, 187, § 2.
R. S. 130, § 20.
G. S. 165, § 39.
1879, 39.
P. S. 207, § 49.
100 Mass. 181.

1 SECTION 67. Whoever wrongfully, and by any act not included
2 in the provisions of the preceding section, destroys, injures or re-
3 moves a building, fence, railing or other thing lawfully erected in
4 or around a place of burial or cemetery, or a tree, shrub or plant
5 within its limits, or wrongfully injures a walk or path, or places
6 rubbish or offensive matter or commits a nuisance therein, or in any
7 way desecrates or disfigures the same, shall forfeit for every such
8 offence not less than five nor more than one hundred dollars. Upon
9 the trial of a prosecution for the recovery of such penalty, use and
10 occupation for the purposes of burial shall be sufficient evidence
11 of title.

Desecration of
burial ground.
1841, 114, § 6.
1855, 257, § 8.
G. S. 28, § 12.
P. S. 207, § 50.
2 Allen, 512.
7 Allen, 269.
100 Mass. 181.

1 SECTION 68. Whoever, without authority, removes flowers,
2 flags or memorial tokens from any grave, tomb, monument or
3 burial lot in any cemetery or other place of burial shall be punished
4 by a fine of not more than one hundred dollars for each offence.

Removal of
flowers, etc.,
from grave.
1888, 395.

1 SECTION 69. Whoever lays out, opens, or makes a highway or
2 town way, or constructs a railroad or canal, or any other thing in
3 the nature of a public easement, over, through, in or upon any part
4 of an enclosure, which is the property of a city, town, parish, reli-
5 gious society or of private proprietors and is used or appropriated
6 for the burial of the dead, unless authority for that purpose is
7 specially granted by law, or unless the consent of such city, town,
8 parish, religious society or proprietors, respectively, is first ob-
9 tained, shall be punished by a fine of not more than two thousand
10 dollars or by imprisonment for not more than one year.

Making road,
etc., through
burial ground.
1834, 187, § 1.
R. S. 24, §§ 59,
60; 30, § 21.
G. S. 165, § 40.
P. S. 207, § 51.

Cruelty to
animals.

R. S. 139, § 22.
1853, 96.
G. S. 165, § 41.
1868, 212, §§ 1-4.
1869, 344, §§ 1, 2.
P. S. 207, §§ 52,
53.
7 Allen, 579.
101 Mass. 34.
111 Mass. 408.
113 Mass. 457.
118 Mass. 438.
137 Mass. 560.
145 Mass. 296.
150 Mass. 509.
162 Mass. 517.
164 Mass. 576.
172 Mass. 214.

SECTION 70. Whoever overdrives, overloads, drives when over- 1
loaded, overworks, tortures, torments, deprives of necessary suste- 2
nance, cruelly beats, mutilates or kills an animal, or causes or 3
procures an animal to be so overdriven, overloaded, driven when 4
overloaded, overworked, tortured, tormented, deprived of neces- 5
sary sustenance, cruelly beaten, mutilated or killed, and whoever, 6
having the charge or custody of an animal, either as owner or 7
otherwise, inflicts unnecessary cruelty upon it, or unnecessarily 8
fails to provide it with proper food, drink, shelter or protection 9
from the weather, and whoever as owner, possessor or person hav- 10
ing the charge or custody of an animal, cruelly drives or works it 11
when unfit for labor, or cruelly abandons it, or carries it or causes it 12
to be carried in or upon a vehicle, or otherwise, in an unnecessarily 13
cruel or inhuman manner, or knowingly and wilfully authorizes 14
or permits it to be subjected to unnecessary torture, suffering or 15
cruelty of any kind, shall be punished by imprisonment for not 16
more than one year or by a fine of not more than two hundred and 17
fifty dollars, or by both such fine and imprisonment. 18

Corporations
liable.

1868, 212, § 7.
1869, 344, § 6.
P. S. 207, § 54.

SECTION 71. A corporation which violates any provision of the 1
preceding section shall be punished by a fine as therein provided, 2
and shall be responsible for the knowledge and acts of its agents 3
and servants relative to animals transported, owned or used by it 4
or in its custody. 5

Mutilation of
horses.

1889, 267.
1894, 461, §§ 1-3.

SECTION 72. Whoever cuts the bone of the tail of a horse for 1
the purpose of docking the tail, or whoever causes or knowingly 2
permits the same to be done upon the premises of which he is the 3
owner, lessee, proprietor or user, or whoever assists in or is present 4
at such cutting, shall be punished by imprisonment for not more 5
than one year or by a fine of not less than one hundred nor more 6
than three hundred dollars. If a horse is so found with its tail 7
so cut and with the wound resulting from such cutting unhealed, 8
upon the premises of any person or in the charge and custody of 9
any person, such fact shall be prima facie evidence of a violation 10
of the provisions of this section by the owner or user of such prem- 11
ises or the person having such charge or custody, respectively. 12

Rest for
animals

transported.
1868, 212, § 5.
1869, 344, § 3.
1874, 372, § 142.
P. S. 207, § 55.
170 Mass. 44.

SECTION 73. Railroad corporations shall not permit animals 1
which they are carrying or transporting to be confined in cars 2
longer than twenty-eight consecutive hours without unloading them 3
for at least five consecutive hours for rest, water and feeding, unless 4
prevented by storm or accident. In estimating such confinement, 5
the time during which the animals have been confined without such 6
rest on connecting roads from which they are received shall be in- 7
cluded. Animals so unloaded shall during such rest be properly 8
fed, watered and sheltered by the owner or person having the cus- 9
tody of them, or, in case of his default, by the railroad corporation 10
transporting them, at the expense of said owner or person in cus- 11
tody thereof. In such case the corporation shall have a lien upon 12
such animals for food, care and custody furnished, and shall not be 13
liable for such detention. A corporation, owner or custodian of 14
such animals who fails to comply with the provisions of this sec- 15
tion shall be punished by a fine of not less than one hundred nor 16

17 more than five hundred dollars. The provisions of this section shall
18 not apply to animals carried in cars in which they can and do have
19 proper food, water, space and opportunity for rest.

1 SECTION 74. A person found violating any provision of sec-
2 tions seventy and seventy-three may be arrested and held without
3 a warrant as provided in section forty-seven: and the person mak-
4 ing an arrest with or without a warrant shall use reasonable dili-
5 gence to give notice thereof to the owner of animals found in the
6 charge or custody of the person arrested, shall properly care and
7 provide for such animals until the owner thereof takes charge of
8 them, not, however, exceeding sixty days from the date of said
9 notice and shall have a lien on said animals for the expense of such
10 care and provision.

Arrest for
cruelty to
animals.
1869, 344, § 4.
P. S. 207, § 56.

1 SECTION 75. If complaint is made to a court or magistrate
2 which is authorized to issue warrants in criminal cases that the
3 complainant believes and has reasonable cause to believe that the
4 laws relative to cruelty to animals have been or are violated in any
5 particular building or place, such court or magistrate, if satisfied
6 that there is reasonable cause for such belief, shall issue a search
7 warrant authorizing any sheriff, deputy sheriff, constable or police
8 officer to search such building or place: but no such search shall be
9 made after sunset, unless specially authorized by the magistrate
10 upon satisfactory cause shown.

Search
warrant.
1869, 344, § 5.
P. S. 207, § 57.

1 SECTION 76. Sheriffs, deputy sheriffs, constables and police
2 officers shall prosecute all violations of the provisions of sections
3 seventy to seventy-three, inclusive, which come to their notice, and
4 upon all convictions for cruelty to animals the fines collected upon
5 or resulting from the complaint or information of an officer or agent
6 of the Massachusetts Society for the Prevention of Cruelty to
7 Animals shall, except as provided in the following section, be
8 paid over to said society after deducting therefrom for the expense
9 of prosecution such amount as the court or trial justice shall order.

Officers to
prosecute.
Disposition
of fines.
1868, 212, § 8.
1869, 344, § 7.
P. S. 207, § 58.
1891, 304.

1 SECTION 77. One-half of all fines collected upon convictions
2 under the provisions of section seventy-two upon or resulting from
3 the complaint or information of any officer or agent of the Massa-
4 chusetts Society for the Prevention of Cruelty to Animals shall
5 be paid over to said society.

Same subject.
1894, 461, § 4.

1 SECTION 78. Whoever keeps or uses a live pigeon, fowl or other
2 bird for the purpose of a target, or to be shot at either for amuse-
3 ment or as a test of skill in marksmanship, or shoots at a bird kept
4 or used as aforesaid, or is a party to such shooting, or lets any
5 building, room, field or premises, or knowingly permits the use
6 thereof, for the purpose of such shooting, shall be punished by a
7 fine of not more than fifty dollars or by imprisonment for not
8 more than thirty days, or by both such fine and imprisonment.
9 Nothing herein contained shall apply to the shooting of wild game.

Pigeon shoot-
ing, etc.
1879, 187.
P. S. 207, § 59.

1 SECTION 79. If complaint is made to a court or magistrate
2 authorized to issue warrants in criminal cases that the complainant
3 believes and has reasonable cause to believe that preparations are

Search war-
rant for fight-
ing birds, etc.
1876, 85, § 1.
P. S. 207, § 60.

being made for an exhibition of the fighting of birds, dogs or other animals, or that such exhibition is in progress, or that birds, dogs or other animals are kept or trained for fighting at any place or in any building or tenement, such court or magistrate, if satisfied that there is reasonable cause for such belief, shall issue a search warrant authorizing any sheriff, deputy sheriff, constable or police officer to search such place, building or tenement at any hour of the day or night and take possession of all such birds, dogs or other animals there found and arrest all persons there present at any such exhibition or where preparations for such exhibition are being made, or where birds, dogs or other animals are kept or trained for fighting.

Entry without
a warrant, etc.
1869, 435, § 1.
1876, 85, § 2.
P. S. 207, § 61.

SECTION 80. Any officer authorized to serve criminal process may, without a warrant, enter any place, building or tenement in which there is an exhibition of the fighting of birds, dogs or other animals, or in which preparations are being made for such an exhibition, and arrest all persons there present and take possession of and remove from the place of seizure the birds, dogs or other animals engaged in fighting, or there found and intended to be used or engaged in fighting, or kept or trained for fighting and hold the same in custody subject to the order of court as herein-after provided.

Persons ar-
rested to be
taken before
court, etc.
1869, 435, § 1.
1876, 85, § 3.
P. S. 207, § 62.

SECTION 81. Persons arrested under the provisions of the two preceding sections shall be kept in jail or other convenient place not more than twenty-four hours, Sunday or a legal holiday excepted, at or before the expiration of which time they shall be taken before a police, district or municipal court or a trial justice and proceeded against according to law.

Judgment of
forfeiture,
etc.; proceed-
ings thereon.
1869, 435, § 2.
1876, 85, § 4.
P. S. 207, § 63.

SECTION 82. After such seizure and removal of such birds, dogs or other animals, application shall be made to a police, district or municipal court or a trial justice, for a decree of forfeiture of the same, and if, upon the hearing of such application, such notice thereof having been previously given as the justice or court orders, it shall be found that such birds, dogs or other animals, or any of them, at the time of such seizure were engaged in fighting at an exhibition thereof, or were owned, kept, possessed or trained by any person with the intent that they should be so engaged, such birds, dogs or other animals shall be adjudged forfeited and such justice or court shall thereupon, unless an appeal is taken as hereinafter provided, issue an order for killing them, which shall be directed to any officer who is authorized to serve criminal process; and the officer receiving said order shall cause such birds, dogs or other animals to be killed within twenty-four hours thereafter. Birds, dogs or other animals seized as hereinbefore provided, which are not adjudged forfeited, shall be delivered to the owner or to the person who is entitled to the possession thereof. Any person shall be allowed to appear as claimant in the proceeding upon the application for a decree of forfeiture.

Appeal.
1869, 435, § 3.
1876, 85, § 5.
P. S. 207, § 64.

SECTION 83. An owner or claimant who is aggrieved by a judgment of such court or trial justice may, within twenty-four hours

3 after the entry of such judgment and before execution thereof,
 4 appeal therefrom to the superior court; and all proceedings upon
 5 and after such appeal, including the right of exception, shall con-
 6 form, so far as may be, to those in criminal cases, except that before
 7 such appeal is allowed the appellant shall recognize to the common-
 8 wealth in the sum of two hundred dollars, with sufficient sureties,
 9 to prosecute his appeal and to pay such expenses of the prosecution
 10 as the court may order and such expenses as may be thereafter in-
 11 curred in the care and keeping of the birds, dogs or other animals
 12 claimed by such appellant if final judgment is rendered against
 13 them, and to abide the judgment of the court thereon. Upon the
 14 final judgment, the birds, dogs or other animals which are held in
 15 custody to abide such judgment shall be disposed of under the
 16 direction of the superior court, in like manner as the court or
 17 justice might have disposed of them if no appeal had been taken.
 18 During the pendency of the appeal, all birds, dogs or other animals
 19 which have been adjudged forfeited shall be kept in custody in a
 20 place other than that from which they were taken.

1 SECTION 84. The necessary expenses which are incurred in the
 2 care and destruction of such birds, dogs and other animals may
 3 be allowed and paid in the same manner as expenses in criminal
 4 prosecutions.

Expenses of
 care, etc., of
 birds, etc.
 1869, 435, § 4.
 1876, 85, § 6.
 P. S. 207, § 65.

1 SECTION 85. Whoever owns, possesses, keeps or trains a bird,
 2 dog or other animal, with the intent that such bird, dog or other
 3 animal shall be engaged in an exhibition of fighting, or whoever
 4 establishes or promotes an exhibition of the fighting of birds, dogs
 5 or other animals, shall be punished by a fine of not more than two
 6 hundred dollars, or by imprisonment for not more than one year,
 7 or by both such fine and imprisonment.

Penalty on
 owner, etc.
 1859, 158, § 1.
 G. S. 88, § 79.
 1869, 435, § 5.
 1876, 85, § 7.
 P. S. 207, § 66.

1 SECTION 86. Whoever is present at any place, building or tene-
 2 ment where preparations are being made for an exhibition of the
 3 fighting of birds, dogs or other animals, with intent to be present
 4 at such exhibition, or is present at, aids in or contributes to such
 5 exhibition, shall be punished by a fine of not more than twenty-
 6 five dollars or by imprisonment for not more than thirty days, or
 7 by both such fine and imprisonment.

— for being
 present at
 exhibition, etc.
 1859, 158, § 2.
 G. S. 88, § 79.
 1869, 435, § 6.
 1876, 85, § 8.
 P. S. 207, § 67.

1 SECTION 87. Whoever wilfully sends to the publisher of a
 2 newspaper for publication a false notice of a birth, marriage or
 3 death shall be punished by a fine of not more than one hundred
 4 dollars.

False notice of
 birth, etc.
 1860, 195.
 P. S. 207, § 68.

1 SECTION 88. A director or officer of a corporation which is
 2 engaged in the business of a collection agency or in making collec-
 3 tions from delinquent debtors or any other person who employs
 4 persons, dressed in unusual and striking costumes which are in-
 5 tended to attract public attention to the occupation of the wearers,
 6 to call upon debtors for the purpose of demanding payment of
 7 debts alleged to be due; and whoever, being so employed, calls at
 8 the house or place of business of an alleged debtor, wearing such
 9 costume, or a costume having an inscription adapted to attract

Costumed debt
 collectors.
 1899, 238.

attention to his occupation, shall be punished by a fine of not less 10
 than fifty nor more than five hundred dollars or by imprisonment 11
 in jail for not less than three months nor more than three years. 12

Color or race
 discrimina-
 tion.

1865, 277.
 1866, 252.
 P. S. 207, § 69.
 1885, 316.
 1893, 436.
 1895, 461.
 13 Allen, 247.

SECTION 89. Whoever makes any distinction, discrimination or 1
 restriction on account of color or race or, except for good cause, 2
 applicable alike to all persons of every color and race, relative to 3
 the admission of any person to, or his treatment in, a theatre, 4
 skating rink or other public place of amusement, licensed or unli- 5
 censed, or in a public conveyance or public meeting, or in an inn, 6
 barber shop or other public place kept for hire, gain or reward, 7
 licensed or unlicensed, or whoever aids or incites such distinction, 8
 discrimination or restriction, shall, for each offence, be punished by 9
 a fine of not more than three hundred dollars or by imprisonment 10
 for not more than one year, or by both such fine and imprison- 11
 ment, and shall forfeit to any person aggrieved thereby not less 12
 than twenty-five nor more than three hundred dollars; but such 13
 person so aggrieved shall not recover against more than one person 14
 by reason of any one act of distinction, discrimination or restriction. 15

CHAPTER 213.

OF CRIMES AGAINST THE PUBLIC HEALTH.

Adulteration
 of liquor used
 for drink.
 1855, 356.
 G. S. 166, § 4.
 P. S. 208, § 4.

SECTION 1. Whoever, for the purpose of sale, adulterates any 1
 liquor used or intended for drink with Indian cockle, vitriol, grains 2
 of paradise, opium, alum, cochineal, capsicum, copperas, laurel 3
 water, logwood, Brazil wood, sugar of lead or any other substance 4
 which is poisonous or injurious to health, and whoever knowingly 5
 sells any such liquor so adulterated, shall be punished by imprison- 6
 ment in the state prison for not more than three years; and the 7
 articles so adulterated shall be forfeited. 8

Sale of poison.
 1857, 280.
 G. S. 166, § 7.
 P. S. 208, § 6.
 1887, 38.
 1888, 209.
 1896, 397, § 20.
 1898, 192.

SECTION 2. Whoever sells arsenic (arsenious acid), atropia or 1
 any of its salts, chloral hydrate, chloroform, cotton root and its 2
 fluid extract, corrosive sublimate, cyanide of potassium, Donovan's 3
 solution, ergot and its fluid extract, Fowler's solution, laudanum, 4
 McMunn's elixir, morphia or any of its salts, oil of pennyroyal, oil 5
 of savin, oil of tansy, opium, Paris green, Parsons' vermin exterminator, phosphorus, prussic acid, "rough on rats", strychnia or any 7
 of its salts, tartar emetic, tincture of aconite, tincture of bella- 8
 donna, tincture of digitalis, tincture of nux vomica, tincture of 9
 veratrum viride, or carbolic acid, without the written prescription 10
 of a physician, shall affix to the bottle, box or wrapper containing 11
 the article sold a label of red paper upon which shall be printed in 12
 large black letters the name and place of business of the vendor and 13
 the words *Poison* and *Antidote*, and the label shall also contain 14
 the name of an antidote, if any, for the poison sold. He shall also 15
 keep a record of the name and quantity of the article sold and of 16
 the name and residence of the person or persons to whom it was 17
 delivered, which shall be made before the article is delivered and 18
 shall at all times be open to inspection by the officers of the district 19

20 police and by the police authorities and officers of cities and towns ;
 21 but no sale of cocaine or its salts shall be made except upon the
 22 prescription of a physician. Whoever neglects to affix such label
 23 to such bottle, box or wrapper before delivery thereof to the pur-
 24 chaser or whoever neglects to keep or refuses to show to said offi-
 25 cers such record or whoever purchases any of said poisons and gives
 26 a false or fictitious name to the vendor shall be punished by a fine
 27 of not more than fifty dollars. The provisions of this section shall
 28 not apply to sales by wholesale dealers or manufacturing chemists
 29 to retail dealers, or to a general merchant who sells Paris green,
 30 London purple or other arsenical poisons in unbroken packages
 31 containing not less than one-quarter of a pound, for the sole purpose
 32 of destroying potato bugs or other insects upon plants, vines or
 33 trees, except that he shall record each sale and label each package
 34 sold, as above provided.

1 SECTION 3. Whoever sells a cigarette to a person under eight-
 2 een years of age, or whoever sells snuff or tobacco in any of its
 3 forms to a person under sixteen years of age, or, not being his
 4 parent or guardian, gives a cigarette to a person under eighteen
 5 years of age, or gives snuff or tobacco in any of its forms to a
 6 person under sixteen years of age, shall be punished by a fine of
 7 not more than fifty dollars.

Sale of
cigarettes or
tobacco to
minors.
1886, 72.
1891, 373.

1 SECTION 4. Whoever sells to a person under sixteen years of
 2 age any candy or other article enclosing liquid or syrup containing
 3 more than one per cent of alcohol shall be punished by a fine of not
 4 less than fifty nor more than one hundred dollars.

— of candy
containing
alcohol.
1891, 333.

1 SECTION 5. Whoever knowingly feeds or has in his possession
 2 with intent to feed to a milch cow any garbage, refuse or offal
 3 collected by a city or town, or by any person having authority from
 4 any city or town, by contract or otherwise, shall be punished by
 5 imprisonment for not more than sixty days or by a fine of not more
 6 than one hundred dollars; and whoever knowingly feeds or has in
 7 his possession with intent to feed to any food animal, except swine,
 8 any garbage, refuse or offal collected by a city of more than thirty
 9 thousand inhabitants, by contract or otherwise, shall be punished
 10 by imprisonment for not more than thirty days or by a fine of
 11 not more than fifty dollars.

Feeding of
garbage to
animals.
1889, 326.
1895, 385.

1 SECTION 6. Whoever himself or by his agent or servant, or as
 2 the agent or servant of another person, manufactures, sells or ex-
 3 changes, or has in his custody or possession with intent to sell or
 4 exchange, or exposes or offers for sale or exchange, any toys or
 5 confectionery, containing or coated wholly or in part with arsenic,
 6 shall be punished by a fine of not less than fifty nor more than one
 7 hundred dollars.

Sale of articles
containing
arsenic.
1891, 374, § 1.

1 SECTION 7. Whoever offers or exposes for sale or exchange any
 2 paper, fabric or other article shall furnish a sample thereof sufficient
 3 for the purpose of ascertaining by analysis the existence of arsenic
 4 therein, if such sample can be obtained without damage to the re-
 5 maining portion, to any inspector, chemist or other agent or officer

Samples for
analysis.
1891, 374, § 3.

of the state board of health who applies therefor and tenders the value thereof; and for a violation of the provisions of this section shall be punished as provided in the preceding section.

Sale of textiles containing arsenic.
1900, 325.
1901, 188.

SECTION 8. Whoever himself or by his agent or servant manufactures, sells or exchanges, or has in his custody or possession with intent to sell or exchange, any woven fabric or paper containing arsenic in any form, or any article of dress or household use composed wholly or in part of such woven fabric or paper, shall be punished by a fine of not less than fifty nor more than two hundred dollars; but the provisions of this section shall not apply to articles intended for the destruction of insects, having the word "*Poison*" plainly printed in uncondensed gothic letters not less than one inch long on both sides of each sheet and square foot of the fabric, or to dress goods or articles of dress containing not more than one one-hundredth grain, or to other materials or articles containing not more than one-tenth grain of arsenic for each square yard of the material. The state board of health shall make all necessary investigations as to the existence of arsenic in the aforesaid articles and materials, employ inspectors and chemists and adopt such measures as are necessary to enforce the provisions of this section.

Coloring matter in sausages.
1898, 193.

SECTION 9. Whoever, in the manufacture of sausages, uses any coloring matter injurious to health shall be punished by a fine of not more than one hundred dollars for each offence.

Refusal of water supply.
1898, 168.
171 Mass. 329.

SECTION 10. A corporation which, being engaged in selling or distributing water, refuses or neglects to furnish or supply water to or for any building or premises for the reason that a water bill remains unpaid by a previous owner or occupant of said building or premises shall, unless the person applying for water is in arrears to such corporation for water previously furnished to or for said building or premises, or to or for any other building or premises, be punished by a fine of not less than ten nor more than twenty dollars.

CHAPTER 214.

OF CRIMES AGAINST PUBLIC POLICY.

Penalty for winning, etc., money by gaming.
C. L. 57, § 2;
58, § 1.
1785, 58, § 3.
R. S. 50, § 14.
G. S. 85, § 3.
P. S. 99, § 3.

SECTION 1. Whoever, on a prosecution commenced within eighteen months after the commission of the crime, is convicted of winning at one time or sitting, by gaming or betting on the sides or hands of those gaming, money or goods to the value of five dollars or more, and of receiving the same or security therefor, shall forfeit double the value of such money or goods.

— for gaming in railroad car, etc.
1869, 382.
P. S. 99, § 4.

SECTION 2. Whoever, in a railroad car, steamboat or other public conveyance, plays at cards, dice or any other game for money or other property, or bets on the sides or hands of those playing, shall for each offence forfeit not more than fifty dollars or be imprisoned for not more than three months. If he is discovered in the act, he may be arrested without a warrant by a sheriff, deputy

7 sheriff, constable or other civil officer, and held in custody, in jail
8 or otherwise, for not more than twenty-four hours, until complaint
9 is made against him for such offence.

1 SECTION 3. Every innholder, common victualler, or person
2 keeping or suffering to be kept in any place occupied by him im-
3 plements such as are used in gaming, in order that the same may
4 for hire, gain or reward be used for purposes of amusement, who
5 suffers implements of such kind to be used upon any part of such
6 premises for the purpose of gaming for money or other property, or
7 who suffers a person to play at an unlawful game or sport therein,
8 shall for the first offence forfeit not more than one hundred dollars
9 or be imprisoned for not more than three months; and for every
10 subsequent offence shall be imprisoned for not more than one year.
11 In either case he shall further recognize with sufficient sureties in a
12 reasonable sum for his good behavior, and especially that he will
13 not be guilty of any offence against the provisions of sections one
14 to six, inclusive, for three years from the date of the recognizance.

Penalty on
innholders,
etc., for keep-
ing, etc., im-
plements for
gaming.
C. L. 57, § 2.
1692-3, 20, § 3.
1786, 48, § 5.
1788, 20, §§ 1, 2.
1832, 166, § 11.
R. S. 47, § 9;
50, §§ 16, 17.
1845, 211.
1853, 399.
1854, 450.
G. S. 85, § 5.
P. S. 99, § 6.
3 Met. 130.
8 Met. 232.
3 Met. 572.
3 Cush. 279.
12 Cush. 501.

1 SECTION 4. Whoever, in any place mentioned in the preceding
2 section, for the purpose of gaming for money or other property,
3 uses or takes part in using a billiard table, bowling alley, or other
4 implement of gaming, or there plays at an unlawful game or sport,
5 or, for the purpose of such gaming, uses or takes part in using a
6 billiard table or bowling alley kept by a person licensed as provided
7 in chapter one hundred and two, shall for each offence forfeit not
8 more than fifty dollars.

G. S. 85, § 6.

P. S. 99, § 7.

— for gaming
in such places,
and in places
licensed for
bowling
alleys, etc.
C. L. 57, § 2.
1692-3, 20, § 3.
1785, 58, § 5.
1788, 20, § 3.
1832, 166, § 11.
R. S. 47, § 10;
50, § 18.

1 SECTION 5. Whoever keeps or assists in keeping a common
2 gaming house, or house, building, room or place occupied, used or
3 kept for the purposes described in section twenty-three, or is found
4 playing or present as provided in said section, or commonly keeps
5 or suffers to be kept, in a building or place actually used and
6 occupied by him, tables or other apparatus for the purpose of play-
7 ing at an unlawful game or sport for money or any other valuable
8 thing, shall be punished by a fine of not more than fifty dollars or by
9 imprisonment for not more than three months.

141 Mass. 106.

160 Mass. 310.

161 Mass. 281.

166 Mass. 370.

— for keeping
common gam-
ing house, etc.
1798, 20, § 2.
1832, 166, § 11.
R. S. 50, § 17.
1848, 315.
1857, 194, §§ 1, 4.
G. S. 85, §§ 7, 8.
1869, 364, § 1.
P. S. 99, §§ 9, 10.
1887, 448, § 2.
1895, 419, § 9.
7 Allen, 305.

1 SECTION 6. Whoever, during or within twelve hours of the time
2 of holding a cattle show, military muster or public gathering,
3 within one mile of the place thereof, practises or engages in any
4 gambling or unlawful game shall for each offence forfeit not more
5 than twenty dollars. If he is discovered in the act, he may be
6 arrested without a warrant by any sheriff, deputy sheriff, constable
7 or other civil officer, and held in custody, in jail or otherwise, for
8 not more than twenty-four hours, until a complaint is made against
9 him for such offence.

Gaming at
cattle shows,
musters, etc.
1853, 27.
G. S. 85, § 9.
1861, 127, § 2.
P. S. 99, § 11.

1 SECTION 7. Whoever sets up or promotes a lottery for money,
2 or by way of lottery disposes of any property of value, or under the
3 pretext of a sale, gift or delivery of other property or of any
4 right, privilege or thing whatever disposes of or offers or attempts
5 to dispose of any property, with intent to make the disposal thereof

Setting up or
promoting
lottery, gift,
etc.
1719-20, 8, §§ 1, 2.
1732-3, 14, § 1.
1785, 24, §§ 1, 2.
1800, 57, § 1.
1817, 191, § 1.

1822, 90.
1825, 184, § 1.
1833, 148, § 1.
R. S. 132, § 1.
1856, 121, § 1.
G. S. 167, § 1.
P. S. 209, § 1.
1895, 419, § 13.
8 Pick. 78.
2 Met. 329.
2 Gray, 69.
13 Allen, 534.
97 Mass. 583.
137 Mass. 250.
146 Mass. 142.
150 Mass. 322.

dependent upon or connected with chance by lot, dice, numbers, game, hazard or other gambling device, whereby such chance or device is made an additional inducement to the disposal or sale of said property, and whoever aids either by printing or writing, or is in any way concerned, in the setting up, managing or drawing of such lottery, or in such disposal or offer or attempt to dispose of property by such chance or device, shall for each offence be punished by a fine of not more than two thousand dollars or by imprisonment for not more than one year. 159 Mass. 55. 177 Mass. 345.

Permitting lottery, etc., to be set up, etc., in a house, etc.
1800, 57, § 1.
1817, 191, § 1.
1822, 90.
1825, 184, § 1.
1833, 148, § 1.
R. S. 132, § 1.
1856, 121, § 1.
G. S. 167, § 2.
P. S. 209, § 2.
1895, 419, § 13.
2 Gray, 69.

SECTION 8. Whoever, in a house, shop or building owned or occupied by him or under his control, knowingly permits the setting up, managing or drawing of such lottery, or such disposal or attempt to dispose of property, or the sale of a lottery ticket or share of a ticket, or any other writing, certificate, bill, token or other device purporting or intended to entitle the holder, bearer or any other person to a prize or to a share of or interest in a prize to be drawn in a lottery, or in such disposal of property, and whoever knowingly suffers money or other property to be raffled for in such house, shop or building, or to be won there by throwing or using dice or by any other game of chance, shall for each offence be punished by a fine of not more than two thousand dollars or by imprisonment for not more than one year.

Selling lottery ticket, share, etc., or aiding therein.
1732-3, 14, § 3.
1785, 24, § 3.
1800, 57, § 2.
1817, 191, § 1.
1822, 90.
1825, 184, § 1.
1833, 148, § 1.
R. S. 132, § 2.
1856, 121, § 1.
G. S. 167, § 3.
P. S. 209, § 3.
1895, 419, § 13.

SECTION 9. Whoever sells, either for himself or another person, or offers for sale or has in his possession with intent to sell or offer for sale or to exchange or negotiate, or aids or assists in the selling, negotiating or disposing of a ticket in such lottery, or a share of a ticket, or any such writing, certificate, bill, token or other device, or a share or right in such disposal or offer, as is mentioned in section seven, shall for each offence be punished by a fine of not more than two thousand dollars or by imprisonment for not more than one year. 2 Met. 329. 13 Allen, 534.

Second conviction.
1833, 148, § 1.
R. S. 132, § 3.
1856, 121, § 1.
G. S. 167, § 4.
P. S. 209, § 4.

SECTION 10. Whoever, after being convicted of any offence mentioned in the three preceding sections, commits the like offence, or any other of the offences therein mentioned, shall, in addition to the fine therein provided, be punished by imprisonment for not more than one year.

Advertising lottery ticket.
1732-3, 14, § 2.
1785, 24, § 2.
1800, 57, § 1.
1817, 191, § 1.
1822, 90.
1825, 184, § 1.
1828, 134, § 1.
1833, 148, § 2.
R. S. 132, § 4.
G. S. 167, § 5.
P. S. 209, § 5.
1895, 419, § 13.
5 Pick. 41, 42.

SECTION 11. Whoever advertises a lottery ticket or a share in such ticket for sale, either himself or by another person, or sets up or exhibits, or devises or makes for the purpose of being set up or exhibited, any sign, symbol or emblematic or other representation of a lottery or the drawing thereof, in any way indicating where a lottery ticket or a share thereof or such writing, certificate, bill, token or other device before mentioned may be obtained, or in any way invites or entices, or attempts to invite or entice, any other person to purchase or receive the same, shall for each offence be punished by a fine of not more than two thousand dollars or by imprisonment for not more than one year.

Making or selling ticket in a fictitious lottery.

SECTION 12. Whoever makes or sells, or has in his possession with intent to sell, exchange or negotiate, or by printing, writing

3 or otherwise assists in making or selling or in attempting to sell,
 4 exchange or negotiate, a false or fictitious lottery ticket, or any
 5 share thereof, or any writing, certificate, bill, token or other device
 6 before mentioned, or any ticket or share thereof in a fictitious or
 7 pretended lottery, knowing the same to be false or fictitious, or
 8 receives any money or other thing of value for such ticket or share
 9 of a ticket, writing, certificate, bill, token or other device purport-
 10 ing that the owner, bearer or holder thereof shall be entitled to
 11 receive any prize, or share of a prize, or other thing of value, that
 12 may be drawn in a lottery, knowing the same to be false or
 13 fictitious, shall for each offence be punished by imprisonment in the
 14 state prison for not more than three years.

1833, 148, § 3.
 R. S. 132, § 5.
 G. S. 167, § 6.
 P. S. 209, § 6.
 13 Allen, 534.
 97 Mass. 583.

1 SECTION 13. Upon the trial of an indictment for either of the
 2 crimes mentioned in the preceding section, a ticket or share of a
 3 ticket, or other writing or thing before mentioned, which the defend-
 4 ant has sold or offered for sale, or for which he has received a
 5 valuable consideration, shall be deemed false, spurious, or fictitious,
 6 unless the defendant proves that the same was true and genuine,
 7 duly issued by the authority of some legislature within the United
 8 States, that such lottery was existing and undrawn and that such
 9 ticket or share thereof, or other writing or thing before mentioned,
 10 was issued by lawful authority and is binding upon the person who
 11 issued the same.

Defendant to
 prove genuine-
 ness, etc., of
 ticket sold by
 him.
 1833, 148, § 3.
 R. S. 132, § 6.
 G. S. 167, § 7.
 P. S. 209, § 7.
 13 Allen, 534.

1 SECTION 14. Money or any other valuable thing drawn as a prize
 2 or share thereof in a lottery, and all property disposed of or offered to
 3 be disposed of by any chance or device under the pretext mentioned
 4 in section seven, by an inhabitant of or resident within this com-
 5 monwealth, and all money or any other thing of value received by
 6 such person by reason of his being the owner or holder of a ticket
 7 or share of a ticket in a lottery or pretended lottery, or of a share
 8 or right in any such scheme of chance or such device, contrary to
 9 the provisions of this chapter, shall be forfeited, and may be re-
 10 covered by an information filed or by an action for money had and
 11 received brought by the attorney general or a district attorney in
 12 the name and on behalf of the commonwealth.

Prizes, etc.,
 forfeited.
 1817, 191, § 2.
 1833, 148, § 5.
 R. S. 132, § 8.
 1856, 121, § 2.
 G. S. 167, § 8.
 P. S. 209, § 8.

1 SECTION 15. Whoever aids, either by printing or writing, or is
 2 in any way concerned in setting up, promoting, managing or draw-
 3 ing a lottery for money, set up, promoted, managed or drawn out
 4 of this commonwealth, shall for each offence be punished by a fine
 5 of not more than two thousand dollars or by imprisonment for not
 6 more than one year.

Aiding in set-
 ting up foreign
 lottery.
 1839, 112, § 1.
 P. S. 209, § 9.
 1895, 419, § 13.

1 SECTION 16. Whoever sells, either for himself or another, or
 2 offers for sale or has in his possession with intent to sell or offer
 3 for sale or to exchange or negotiate, or aids or assists in selling,
 4 negotiating or disposing of a ticket, or a share of a ticket, in a lottery
 5 described in the preceding section, shall for each offence be punished
 6 by a fine of not more than two thousand dollars or by imprisonment
 7 for not more than one year.

Selling ticket
 in such lottery,
 etc.
 1839, 112, § 2.
 P. S. 209, § 10.
 1895, 419, § 13.

1 SECTION 17. Whoever keeps a building or room or any part
 2 thereof or occupies any place with apparatus, books or any device,

Penalty for
 buying and
 selling pools,

or registering
bets.
1878, 165.
P. S. 99, § 8.
1885, 342, § 1.
1895, 419, § 13.
143 Mass. 177.
146 Mass. 203.
154 Mass. 128,
135.
157 Mass. 455.

for the purpose of registering bets, or of buying or selling pools, 3
upon the result of a trial or contest of skill, speed or endurance of 4
man, beast, bird or machine, or upon the result of a game, com- 5
petition, political nomination, appointment or election, or whoever 6
is present in such place engaged in such business or employment ; 7
or, being such keeper, occupant or person present, as aforesaid, 8
registers such bets, or buys or sells such pools, or is concerned in 9
buying or selling the same ; or, being the owner, lessee or occu- 10
pant of a building or room, or part thereof, or private grounds, 11
knowingly permits the same to be used or occupied for any such 12
purpose ; or therein keeps, exhibits, uses or employs, or know- 13
ingly permits to be therein kept, exhibited, used or employed, any 14
device or apparatus for registering such bets, or for buying or sell- 15
ing such pools, shall be punished by a fine of not more than two 16
thousand dollars or by imprisonment for not more than one year. 17
And whoever becomes the custodian or depositary for hire, reward, 18
commission or compensation in any manner, of any pools, money, 19
property or thing of value, in any manner staked or bet upon 20
such result, shall be punished in like manner. 21

Policy lotteries
and shops
prohibited.
1892, 409, § 1.
1895, 419, § 7.

SECTION 18. Whoever keeps, sets up, promotes or is concerned 1
as owner, agent, clerk or in any other manner, in managing a policy 2
lottery or policy shop, or writes, prints, sells, transfers or delivers 3
a ticket, certificate, slip, bill, token or other device, purporting or 4
designed to guarantee or assure to a person, or to entitle him to a 5
chance of drawing or obtaining a prize or thing of value in a lottery 6
or in the game or device commonly known as policy lottery or 7
policy, whether drawn or determined, or remaining to be drawn or 8
determined, or who receives from a person any money or other 9
thing of value for such article or chance ; or for himself or another 10
writes, prints, sells, transfers or delivers or has in his possession 11
for the purpose of sale, transfer or delivery, or in any way aids in 12
selling, exchanging, negotiating, transferring or delivering a chance 13
or ticket in a lottery, or in the game or device commonly known 14
as policy lottery or policy, whether drawn or to be drawn, or any 15
such bill, slip, certificate, token or other device, shall be punished 16
by a fine of not more than five hundred dollars or by imprisonment 17
for not more than one year. 18

Printing,
etc., of tickets
evidence.
1892, 409, § 2.
1895, 419, § 8.

SECTION 19. The printing, writing, advertising, issuing or 1
delivery of any ticket, paper, document or other article or material 2
representing or purporting to represent the existence of or any 3
chance or interest in any lottery, policy lottery or policy game, 4
pool or pools, registered or other bet or other game or hazard, 5
whether drawn or determined, or remaining to be drawn or deter- 6
mined, or the receiving of money or other thing of value for such 7
article or chance, shall be prima facie evidence of the existence, 8
location and drawing of such lottery, policy lottery or policy game 9
and of the act or event upon which such pool or pools, bet, game 10
or hazard, depends or may depend, and of the unlawful character 11
of such lottery, policy lottery, pool, bet, game or hazard, and the 12
issuing or delivery of such ticket, paper, document or other article 13
or material shall be prima facie evidence of value received therefor 14
by the person, company or corporation issuing or delivering the 15

16 same, or aiding or abetting therein, and that such person, company
 17 or corporation is concerned in keeping, managing or promoting
 18 such lottery, pool, bet, game or hazard.

1 SECTION 20. All lottery, policy or pool tickets, slips or checks,
 2 memoranda of any combination or other bet, manifold or other
 3 policy or pool books or sheets, are hereby declared a common
 4 nuisance and the possession thereof unlawful; and the possession
 5 of any such article, or of any other implements, apparatus or
 6 materials of any other form of gaming, shall be prima facie evidence
 7 of their use, by the person having them in possession, in the form
 8 of gaming in which like articles are commonly used. Any such
 9 article found upon the person of one who is lawfully arrested for
 10 violation of any law relative to lotteries, policy lotteries or policy,
 11 the buying or selling of pools or registering of bets or other form
 12 of gaming shall be competent evidence upon the trial of a complaint
 13 or indictment to which it may be relevant. If a person so arrested
 14 in a building or structure or part thereof conceals or attempts to
 15 conceal such articles upon his person or elsewhere, the possession
 16 and concealment or attempt at concealment thereof shall be prima
 17 facie evidence that the place in which the same occurs is kept,
 18 maintained, used or occupied for the form of gaming in which like
 19 articles are commonly used.

Lottery, etc.,
 tickets,
 nuisances;
 possession
 prima facie
 evidence.
 1895, 419, § 3.
 164 Mass. 549.

1 SECTION 21. In a prosecution or proceeding under any law rela-
 2 tive to lotteries, policy lotteries or policy, buying and selling pools
 3 or registered bets, any words, figures or characters, written, printed
 4 or exposed upon a blackboard, placard or otherwise, in a place alleged
 5 to be used or occupied for such business, purporting or appearing
 6 to be a name or names of horses or jockeys, or a description of or
 7 reference to a trial or contest of skill, speed or endurance of man,
 8 beast, bird or machine, or game, competition, political nomination,
 9 appointment or election, or other act or event, or any odds, bet,
 10 combination bet or other stake or wager, or any code, cipher or
 11 substitute therefor, shall be prima facie evidence of the existence
 12 of the race, game, contest or other act or event so purporting or
 13 appearing to be referred to, and that such place is kept or occupied
 14 for gaming; and in all cases the same may be proved by a copy or
 15 by oral description thereof.

Prima facie
 evidence of
 race, etc.
 1895, 419, § 4.

1 SECTION 22. Whoever receives a letter, package or parcel for
 2 delivery or transportation to or from a person, or delivers or trans-
 3 ports the same to or from a person, having reasonable cause to
 4 believe that such person is engaged or in any way concerned in the
 5 management or promotion of or agency for a lottery, or the game
 6 known as policy lottery or policy, or the buying or selling of pools
 7 or registering of bets, or other form of gaming, and that such
 8 letter, package or parcel has relation to such business, shall be
 9 punished by fine of not less than fifty nor more than five hundred
 10 dollars; but the provisions of this section shall not apply to the
 11 receipt, carriage or delivery of United States mail matter by an
 12 officer or employee thereof.

Penalty for
 delivery, etc.,
 of letters, etc.
 1895, 419, § 5.

1 SECTION 23. If a person makes oath before a police, district or
 2 municipal court or a trial justice that he suspects or has probable

Common
 gaming houses,
 etc., to be

entered and
certain persons
arrested.
1834, 172.
R. S. 50, § 19.
1857, 194, § 4.
G. S. 85, § 8.
1869, 364, § 1.
P. S. 99, § 10.
1883, 120.
1887, 448, § 2.
1895, 419, § 9.
11 Met. 79.
141 Mass. 106.
155 Mass. 165.
160 Mass. 310.
161 Mass. 281.

cause to suspect that a house or other building, room or place is unlawfully used as and for a common gaming house, for the purpose of gaming for money or other property, or is occupied, used or kept for promoting a lottery, or for the sale of lottery tickets, or for promoting the game known as policy lottery or policy, or for the buying or selling of pools or registering of bets upon any race, game, contest, act or event, and that persons resort to the same for any such purpose, such court or trial justice, whether the names of the persons last mentioned are known to the complainant or not, shall, in case satisfactory evidence is presented, issue a warrant commanding the sheriff or his deputy or any constable or police officer to enter such house, building, room or place, and to arrest the keepers thereof, all persons in any way assisting in keeping the same, whether as janitor, doorkeeper, watchman or otherwise, all persons who are there found participating in any form of gaming and all persons present whether so participating or not, if any lottery, policy or pool tickets, slips, checks, manifold books or sheets, memoranda of any bet, or other implements, apparatus or materials of any form of gaming are found in said place, and to take into their custody all the implements, apparatus or materials of gaming, as aforesaid, and all the personal property, furniture and fixtures there found, and to keep said persons, implements, apparatus or materials, property, furniture and fixtures so that they may be forthcoming before some court or magistrate to be dealt with according to law. All articles and property seized under the provisions of this section shall be disposed of as provided in sections three to eight, inclusive, of chapter two hundred and seventeen relative to articles seized under clause eleven of section one of said chapter.

Exemption
from penalties
of chapter.
1895, 419, § 9.

SECTION 24. The provisions of this chapter shall not authorize the arrest or conviction of a person who is the owner or proprietor of a race track or trotting course for the reason that a person other than himself has without his knowledge or consent violated any of said provisions relative to the buying and selling of pools or the registering or making of bets or to any offence mentioned in the preceding section; nor the arrest or conviction of a person for being present on a race track or trotting course where pools are sold or bets registered or made on trials of speed or endurance between horses or other animals; but this exception shall not apply to a person in any way participating or assisting in the buying or selling of pools or registering of bets.

Obstructions in
gaming houses.
1887, 448, § 1.
1892, 388, § 1.

SECTION 25. If a captain of police in the city of Boston or marshal or chief of police in any other city or town in the commonwealth finds that access to any building, apartment or place which he has reasonable cause to believe is resorted to for the purpose of unlawful gaming is barred by any obstruction, such as a door, window, shutter, screen, bar or grating of unusual strength, other than what is usual in ordinary places of business, or any unnecessary number of doors, windows or obstructions, he shall order the same to be removed by the owner or agent of the building in which such obstruction exists, and if such captain of police or marshal or chief of police cannot find either of the persons mentioned, so as to make personal service, said notice shall be posted upon the outside

13 of the apartments and on the outside of said building, and upon the
14 neglect to remove such obstruction for seven days from the date of
15 said order or posting of said notices, the captain of police, marshal
16 or chief of police shall cause such obstruction to be removed from
17 such building, and the expense of such removal shall be a lien on
18 said building and be collected by the captain of police or marshal
19 or chief of police removing such obstruction, in the manner in
20 which a mechanic's lien is collected.

1 SECTION 26. If, within one year after removal of said obstruc-
2 tion, the premises are again obstructed as above defined, the captain
3 of police or marshal or chief of police shall have the same power of
4 removal as provided in the preceding section and in addition the
5 owner or agent at the time such second order of removal is given,
6 either by personal service or by posting on the building, shall be
7 liable to a fine of not less than two hundred and fifty nor more than
8 five hundred dollars, and the amount of said fine shall be a lien upon
9 said building and be collected by the captain of police, marshal or
10 chief of police in the manner in which a mechanic's lien is collected.
11 And for every subsequent obstruction as above defined, at any time
12 within two years of the giving of the second notice, as above pro-
13 vided, the captain of police, marshal or chief of police shall have
14 the same powers as provided in the preceding section for removing
15 the obstructions, and the owner or agent at the time such third or
16 subsequent order of removal is given, either by personal service or
17 by posting on the building, shall be liable to a fine of not less than
18 five hundred nor more than one thousand dollars or may be pun-
19 ished by imprisonment for one year, and the amount of said fine
20 shall be a lien upon the said building and shall be collected by the
21 captain of police or marshal or chief of police in the manner in
22 which a mechanic's lien is collected. Obstructions as above defined
23 which shall be erected more than two years after the giving of the
24 notice of the third offence, as above provided, shall be construed to
25 be a first offence under the provisions of this section.

Penalty for
subsequent
obstruction.
1892, 388, § 1.

1 SECTION 27. Any court or magistrate having criminal jurisdic-
2 tion may take judicial notice of the general methods and character
3 of lotteries, policy lotteries or the game called policy, pools or
4 combination bets, and the buying and selling of pools and register-
5 ing of bets. In the trial of a complaint or indictment to which it
6 may be relevant, any lottery, policy or pool ticket, certificate, slip
7 or check, manifold or other policy or pool book or sheet, or memo-
8 randum of any pool or sale of pools, or of a bet or odds, or combi-
9 nation bet, or any other implement, apparatus, materials or articles
10 of a character commonly employed in or in connection with lotteries,
11 policy lotteries or policy, the buying or selling of pools or register-
12 ing of bets, or other form of gaming, shall be prima facie evidence
13 of the existence and unlawful character of a lottery, policy lottery
14 or game, pool or pools, bet, game or hazard, or other form of gaming
15 in which like articles are commonly used, and that such article has
16 relation thereto.

Judicial notice
of lotteries.
1895, 419, § 2.

1 SECTION 28. No plea of misnomer shall be received to a com-
2 plaint or indictment for violation of any law relative to lotteries,

Plea of mis-
nomer, how
received.
1895, 419, § 6.

policy lotteries or policy, the selling of pools or registering of bets, or any form of gaming; but the defendant may be arraigned and tried and, if convicted, sentenced and punished under any name by which he is complained of or indicted. No such complaint or indictment shall be abated, quashed or held insufficient by reason of any alleged defect, either of form or substance, if the same is sufficient to enable the defendant to understand the charge and to prepare his defence. No variance between such complaint or indictment and the evidence shall be deemed material, unless in some matter of substance essential to the charge under the rule above-prescribed.

Gift enter-
prises
prohibited.
1884, 277.
1898, 576.
165 Mass. 147.

SECTION 29. Whoever sells, exchanges or disposes of any property, or offers or attempts so to do, upon a representation, advertisement, notice or inducement that anything other than what is specifically stated to be the subject of the sale or exchange is or is to be delivered or received, or is in any way connected with, or is a part of the transaction, or whoever gives a stamp, coupon or other device which entitles a purchaser to demand or receive from a person or company other than the merchant dealing in the goods purchased or the manufacturer thereof, any other property than that actually sold or exchanged, or whoever delivers by any person or company other than the merchant dealing in the goods purchased, or the manufacturer thereof, goods, wares or merchandise upon the presentation of such stamp, coupon or other device, shall for each offence be punished by a fine of not less than ten nor more than five hundred dollars.

Racing, etc.,
unlawful.
Penalty.
1846, 200.
G. S. 167, § 9.
1865, 67.
P. S. 209, § 11.
1900, 409.
6 Gray, 505.
102 Mass. 405.

SECTION 30. Whoever, except in trials of speed of horses for premiums offered by legally constituted agricultural societies, or by corporations authorized thereto by the provisions of section eleven of chapter one hundred and twenty-five, engages in racing, running, trotting or pacing a horse or other animal of the horsekind for a bet, wager of money or other valuable thing, or of a purse or stake made within this commonwealth, or whoever aids or abets the same, shall be punished by a fine of not more than one thousand dollars or by imprisonment for not more than one year, or by both such fine and imprisonment.

Horses driven
for a premium
or purse, dis-
guise.
1892, 167.

SECTION 31. Whoever, for the purpose of competing for a purse or premium offered by an agricultural society, or by a person or association in this commonwealth, knowingly and designedly enters or drives a horse that is painted or disguised, or is a different horse from the one that purports to be entered or driven, or knowingly and designedly, for the purpose of competing for a premium or purse, enters or drives a horse in a class to which it does not belong, shall be punished by a fine of not more than five hundred dollars or by imprisonment for not more than six months.

Location and
regulation of
trotting parks.
1856, 162, § 1.
G. S. 167, § 10.
1864, 63.
P. S. 209, § 12.

SECTION 32. No land within a city or town shall be laid out or used as a race ground or trotting park without the previous consent of and location by the mayor and aldermen or selectmen, who may regulate and alter the terms and conditions under which the same

5 shall be laid out, used or continued in use and may discontinue
6 the same when in their judgment the public good so requires; and
7 no land shall be used for any of the purposes declared unlawful in
8 section thirty.

1 SECTION 33. Every race ground or trotting park which is estab-
2 lished, laid out, used or continued in use contrary to the provisions
3 of this chapter is declared a common nuisance, and shall be abated
4 as such; and all persons owning, keeping, using, or permitting to
5 be used such race ground or trotting park, or aiding or abetting
6 therein, shall be punished in the manner provided in section thirty.

Unlawful race
ground deemed
nuisance.
Penalty.
1856, 162, §§ 2, 3.
G. S. 167, § 11.
P. S. 209, § 13.

CHAPTER 215.

OF FELONIES, ACCESSORIES AND ATTEMPTS TO COMMIT CRIMES.

1 SECTION 1. A crime which is punishable by death or imprison-
2 ment in the state prison is a felony. All other crimes are misde-
3 meanors. P. S. 210, § 1. 12 Cnsh. 252. 11 Allen, 257. 151 Mass. 96.

Felony and
misdemeanors.
1852, 37, § 1.
G. S. 168, § 1.

1 SECTION 2. Whoever aids in the commission of a felony, or is
2 accessory thereto before the fact by counselling, hiring or otherwise
3 procuring such felony to be committed, shall be punished in the
4 manner provided for the punishment of the principal felon.

P. S. 210, § 3.

127 Mass. 17.

Accessory
before the fact.
1784, 65, § 1;
66, § 9.
1804, 131, § 1.
R. S. 133, § 1.
G. S. 168, § 3.

1 SECTION 3. Whoever counsels, hires or otherwise procures a
2 felony to be committed may be indicted and convicted as an acces-
3 sory before the fact, either with the principal felon or after his con-
4 viction; or may be indicted and convicted of a substantive felony,
5 whether the principal felon has or has not been convicted, or is or
6 is not amenable to justice; and in the last-mentioned case may be
7 punished in the same manner as if convicted of being an accessory
8 before the fact. An accessory to a felony before the fact may be
9 indicted, tried and punished in the same county in which the prin-
10 cipal felon might be indicted and tried, although the counselling,
11 hiring or procuring the commission of such felony was committed
12 within or without this commonwealth or on the high seas.

— when and
how tried.
1830, 49, §§ 1, 2.
R. S. 133, §§ 2, 3.
G. S. 168, §§ 4, 5.
P. S. 210, §§ 4, 5.
16 Mass. 423.
9 Pick. 496.
11 Allen, 258.
101 Mass. 204.
108 Mass. 14.
111 Mass. 395.
114 Mass. 307.

1 SECTION 4. Whoever, not a husband or wife or, by consan-
2 guinity, affinity or adoption, the parent or grandparent, child or
3 grandchild, brother or sister of the offender, after the commission
4 of a felony, harbors, conceals, maintains or assists the principal
5 felon or accessory before the fact, or gives such offender any other
6 aid, knowing that he has committed a felony or has been accessory
7 thereto before the fact, with intent that he shall avoid or escape
8 detention, arrest, trial or punishment, shall be an accessory after
9 the fact, and, except as otherwise provided, be punished by im-
10 prisonment in the state prison for not more than seven years or in
11 jail for not more than three years or by a fine of not more than one
12 thousand dollars.

Accessory
after fact.
1784, 65, § 2;
66, § 9.
1804, 123, § 2;
131, § 5; 143,
§ 10.
1805, 97, § 2;
101, § 3.
R. S. 133, § 4.
G. S. 168, § 6.
1876, 213, § 7.
P. S. 210, § 6.

Accessory
after fact,
how, when
and where
tried.
1830, 49, § 3.
R. S. 133, § 5.
G. S. 168, § 7.
P. S. 210, § 7.

SECTION 5. An accessory to a felony after the fact may be indicted, convicted and punished, whether the principal felon has or has not been previously convicted, or is or is not amenable to justice, either in the county in which he became an accessory or in the county in which the principal felony was committed.

Attempt to
commit crime.
1832, 62.
R. S. 133, § 12.
G. S. 168, § 8.
P. S. 210, § 8.
10 Met. 422.
3 Cush. 529.
5 Cush. 365.
105 Mass. 162,
163, 460.
107 Mass. 225.
140 Mass. 451.
143 Mass. 37.
149 Mass. 229.
170 Mass. 20.

SECTION 6. Whoever attempts to commit a crime by doing any act toward its commission but fails in its perpetration, or is intercepted or prevented in its perpetration, shall, except as otherwise provided, be punished as follows:—

First, If he attempts to commit a crime punishable with death, he shall be punished by imprisonment in the state prison for not more than ten years.

Second, If he attempts to commit a crime punishable by imprisonment in the state prison for life or for five years or more, he shall be punished by imprisonment in the state prison for not more than five years or in jail for not more than one year.

Third, If he attempts to commit a crime punishable by imprisonment in the state prison for less than five years or by imprisonment in jail or by a fine, he shall be punished by imprisonment in jail for not more than one year or by a fine of not more than three hundred dollars.

Fourth, In no case shall the punishment by imprisonment exceed one-half of the greatest punishment which might have been inflicted if the offence attempted had been committed.

TITLE II.

OF PROCEEDINGS IN CRIMINAL CASES.

CHAPTER 216. — Of Proceedings to prevent the Commission of Crimes.

CHAPTER 217. — Of Search Warrants, Rewards, Fugitives from Justice, Arrest, Examination, Commitment, Bail and Probation.

CHAPTER 218. — Of Indictments and Proceedings before Trial.

CHAPTER 219. — Of Trials and Proceedings before Judgment.

CHAPTER 220. — Of Judgment and Execution.

CHAPTER 221. — Of Fines and Forfeitures.

CHAPTER 216.

OF PROCEEDINGS TO PREVENT THE COMMISSION OF CRIMES.

1 SECTION 1. The justices of the supreme judicial court, of the
2 superior court, of police, district and municipal courts and trial
3 justices may cause all laws made for the preservation of the public
4 peace to be kept; and in the execution of that power may require
5 persons to give security to keep the peace, or for their good be-
6 havior, or both, as provided in this chapter.

Justices au-
thorized to
keep the peace.
R. S. 134, § 1.
G. S. 169, § 1.
P. S. 211, § 1.
2 Allen, 61.

1 SECTION 2. If complaint is made to any such justice that a
2 person has threatened to commit a crime against the person or
3 property of another, he shall examine the complainant and any
4 witnesses who may be produced, on oath, reduce the complaint to
5 writing and cause it to be subscribed by the complainant.

Complaint of
threat to com-
mit crime.
R. S. 134, § 2.
G. S. 169, § 2.
P. S. 211, § 2.

1 SECTION 3. If, upon examination, the justice finds that there
2 is just cause to fear that such crime may be committed, he shall
3 issue a warrant under his hand, reciting the substance of the com-
4 plaint, and requiring the officer to whom it is directed forthwith to
5 apprehend the person complained of and take him before such
6 justice or some other justice or court having jurisdiction of the
7 cause.

Arrest.
1692-3, 18, § 6.
1783, 51, § 1.
1794, 26, § 2.
R. S. 134, § 3.
G. S. 169, § 3.
P. S. 211, § 3.

1 SECTION 4. If the person complained of is convicted, he may
2 be punished by a fine of not more than one hundred dollars or by
3 imprisonment for not more than six months. He shall have the
4 same right of appeal as in other criminal cases, and the provisions
5 of section twenty-seven of chapter two hundred and nineteen shall
6 apply to such appeals. Instead of imposing sentence, the court

Penalty.
Recognizance
to keep the
peace.
1833, 63.
R. S. 134, § 4.
G. S. 169, § 4.
P. S. 211, § 4.
1894, 505, §§ 1, 2.
1896, 388.
8 Mass. 78.

or justice may order the person complained of to enter into a recognizance, with sufficient sureties, in such sum as the court or justice orders, to keep the peace toward all the people of the commonwealth and especially toward the person requiring such security, for such term, not exceeding six months, as the court or justice may order. The court or justice may at any time, for good cause, revoke such order or reduce the amount of the recognizance, or order that it be taken without surety.

Commitment
on failure to
recognize, etc.
1833, 63, § 1.
R. S. 134, §§ 5, 6.
G. S. 169, § 5.
P. S. 211, § 5.
1894, 505, § 2.

SECTION 5. If the person complained of so recognizes, he shall be discharged, but if he refuses or neglects so to recognize, the court or justice shall commit him to the jail or house of correction during the period for which he was required to give security, or until within that time he so recognizes, stating in the warrant the cause of commitment and the sum and time for which security was required.

Complainant,
when to pay
expenses.
R. S. 134, § 7.
G. S. 169, § 6.
P. S. 211, § 6.

SECTION 6. If, upon examination, the court or justice finds that there is not just cause to fear that such crime will be committed by the person complained of, he shall be forthwith discharged; and if the court or justice finds that the complaint is unfounded, frivolous or malicious, it or he may order the complainant to pay the expenses of prosecution and he shall thereupon be answerable to the magistrate and the officer for their fees, as for his own debt.

Payment of
expenses.
1824, 128, § 2.
1834, 151, § 4.
R. S. 134, § 8.
G. S. 169, § 7.
P. S. 211, § 7.

SECTION 7. If a person is required to give security to keep the peace or for his good behavior, the court or justice may order him to pay the expenses of prosecution, or any part thereof, and that he shall stand committed until they are paid or he is otherwise legally discharged.

Appeal.
1833, 63, § 1.
R. S. 134, § 9.
1852, 14.
G. S. 169, § 8.
P. S. 211, § 8.

SECTION 8. Whoever is aggrieved by an order of a police, district or municipal court or trial justice, requiring him to recognize as aforesaid, may, upon giving the security required, appeal to the superior court, such appeal to be entered on the next return day.

Witnesses to
recognize.
R. S. 134, § 10.
G. S. 169, § 9.
P. S. 211, § 9.

SECTION 9. The court or justice shall require such witnesses as may be necessary to support the complaint to recognize for their appearance at the superior court.

Proceedings
on appeal.
R. S. 134, § 11.
G. S. 169, § 10.
P. S. 211, § 10.

SECTION 10. The superior court may affirm the order or discharge the appellant, or may require him to enter into a new recognizance, with sufficient sureties, in such sum and for such time as it may order, and may make such order relative to the expenses of prosecution as is just and reasonable.

Recognizance
to remain in
force if appeal
is not prosecuted.
R. S. 134, § 12.
G. S. 169, § 11.
P. S. 211, § 11.

SECTION 11. If the appellant fails to prosecute his appeal, his recognizance shall remain in full force and effect as to any breach of the condition, without an affirmation of the judgment or order of the court or justice, and shall also stand as a security for any

5 expenses of prosecution which the superior court orders to be paid
6 by the appellant.

1 SECTION 12. A person who has been committed for not finding
2 sureties, or for refusing to recognize as required by the court or
3 justice, may be discharged upon giving the security which was
4 required. Discharge from commitment upon recognizing.
R. S. 134, § 13.
G. S. 169, § 12. P. S. 211, § 12.

1 SECTION 13. The recognizance taken pursuant to the fore-
2 going provisions shall be transmitted to the superior court on or
3 before the next return day, and shall be there filed of record by the
4 clerk; and upon a breach of the condition an action shall be com-
5 menced thereon by the district attorney. Recognizance to be transmitted to superior court.
R. S. 134, § 14.
1852, 14.
G. S. 169, § 13.
P. S. 211, § 13.

1 SECTION 14. Whoever, in the presence of a justice named in
2 section one or before a court of record, makes an affray, or
3 threatens to kill or beat another, or to commit any violence or out-
4 rage against the person or property of another, and whoever in the
5 presence of such court or magistrate contends with hot and angry
6 words, to the disturbance of the peace, may be ordered, without
7 process or any other proof, to recognize to keep the peace or be of
8 good behavior for not more than three months, and in case of re-
9 fusai may be committed as provided in section five. — when to be required on view of court or justice.
1692-3, 18, § 6.
1794, 26.
R. S. 134, § 15.
G. S. 169, § 14.
P. S. 211, § 11.

1 SECTION 15. Whoever goes armed with a dirk, dagger, sword,
2 pistol or other offensive and dangerous weapon, without reasonable
3 cause to fear an assault or other injury or violence to his person, or
4 to his family or property, may, upon complaint of a person who has
5 reasonable cause to fear an injury or breach of the peace, be required
6 to find sureties for keeping the peace for not more than six months,
7 with the right of appeal as before provided. Persons who go armed to find sureties for the peace, etc.
1692-3, 18, § 6.
1794, 26, § 2.
R. S. 134, § 16.
G. S. 169, § 15.
P. S. 211, § 15.

1 SECTION 16. If, upon a suit brought on such recognizance,
2 the penalty thereof is adjudged forfeited, the court may, upon the
3 petition of a defendant, remit such portion of it as it finds ought
4 to be remitted. Remission of penalty.
1810, 80.
R. S. 134, § 17.
G. S. 169, § 16.
P. S. 211, § 16.

1 SECTION 17. A surety in a recognizance to keep the peace, or
2 for good behavior, or both, shall have the same authority and right
3 to take and surrender his principal as if he were bail for him in a
4 civil cause; and after such surrender shall be discharged and ex-
5 empt from all liability for any act of the principal subsequent to
6 such surrender which would be a breach of the condition of the
7 recognizance. The person so surrendered may recognize anew with
8 sufficient sureties for the residue of the term, and shall thereupon
9 be discharged. Surrender of principal by surety.
R. S. 134, § 18.
G. S. 169, § 17.
P. S. 211, § 17.

CHAPTER 217.

OF SEARCH WARRANTS, REWARDS, FUGITIVES FROM JUSTICE, ARREST, EXAMINATION, COMMITMENT, BAIL, AND PROBATION.

SECTIONS 1-8. — Search Warrants.

SECTIONS 9, 10. — Rewards for Apprehending Offenders.

SECTIONS 11-20. — Fugitives from Justice.

SECTIONS 21-80. — Arrest, Examination, Commitment and Bail.

SECTIONS 81-97. — Probation Officers.

SEARCH WARRANTS.

Search war- rants, issue of. R. S. 142, §§ 1, 2. G. S. 170, §§ 1, 2. P. S. 212, §§ 1, 2. 2 Met. 329. 103 Mass. 456. 119 Mass. 332. 140 Mass. 147. 145 Mass. 184.	SECTION 1. A court or justice authorized to issue warrants in criminal cases may, upon complaint under oath that the complainant believes that any of the property or articles hereinafter named are concealed in a particular house or place, if satisfied that there is reasonable cause for such belief, issue a warrant to search for the following property or articles: —	1 2 3 4 5 6
Stolen prop- erty.	First, Personal property which has been stolen, embezzled or obtained by false pretences.	7 8
Concealed property. 1865, 127, § 2.	Second, Personal property which has been hired or leased or held as collateral security and is fraudulently concealed.	9 10
Insured prop- erty. 1890, 284.	Third, Personal property which has been insured against loss or damage by fire and which the complainant has reasonable cause to believe has been removed or is concealed for the purpose of defrauding the insurer.	11 12 13 14
Counterfeit coin, notes, etc. 1823, 40, § 1.	Fourth, Counterfeit or spurious coin, forged bank notes and other forged instruments, or tools, machines or materials prepared or provided for making them.	15 16 17
Counterfeit trade marks, etc. 1899, 359, § 8.	Fifth, Counterfeits or imitations of a label, trade mark, stamp or form of advertisement recorded pursuant to the statutes of this commonwealth, goods upon which such counterfeit or imitation has been impressed, affixed or used and any dies, plates, brands, moulds, engravings, printing presses, types or other tools, machines or materials prepared or provided for making such counterfeit or imitation.	18 19 20 21 22 23 24
Unwholesome meat or pro- visions. 1866, 253, § 2. 1894, 491, § 14.	Sixth, Diseased animals or carcasses of slaughtered animals, or any tainted, diseased, corrupted, decayed or unwholesome meat, fish, vegetables, produce, fruit or provisions of any kind or the meat of calves which were killed when less than four weeks old, or any product thereof, if kept or concealed with intent to kill, sell or offer the same for sale for food.	25 26 27 28 29 30
Diseased animals.	Seventh, Diseased animals.	31
Obscene litera- ture, etc. 1862, 168, §§ 2, 4.	Eighth, Books, pamphlets, ballads, printed papers and other things containing indecent, impure or obscene language, or indecent, impure or obscene prints, pictures, figures or descriptions manifestly tending to corrupt the morals of youth, and intended to be sold, exhibited, loaned, circulated or distributed, or to be introduced into any family, school or place of education, and the type, forms, press, wood cuts, raw material and mechanical apparatus used and employed in printing and publishing such books, ballads, pamphlets or printed papers.	32 33 34 35 36 37 38 39 40

1899, 408, § 16.

- 41 Ninth, Drugs, medicines, instruments and other articles intended
 42 to be used for self-abuse, or for the prevention of conception, or
 43 for causing unlawful abortion, and the raw materials, tools, ma-
 44 chinery, implements, instruments and personal property used or
 45 intended to be used in the manufacture of such drugs, medicines,
 46 instruments or other articles.
- 47 Tenth, Lottery tickets or other materials unlawfully made, pro-
 48 vided or procured for the purpose of drawing a lottery. 5 Cush. 369. Lottery tickets,
 etc.
 2 Met. 329.
- 49 Eleventh, Gaming apparatus or implements used or kept and
 50 provided to be used in unlawful gaming in any gaming house, or in
 51 any building, apartment or place resorted to for the purpose of
 52 unlawful gaming, and the furniture, fixtures and personal property
 53 found in such place at a time when persons are engaged in unlawful
 54 gaming. Gaming appa-
 ratus and
 furniture.
 1869, 364, § 2.
 11 Met. 79.
 119 Mass. 340.
 141 Mass. 114.
- 55 Twelfth, Pool tickets or other materials unlawfully made, pro-
 56 vided or procured for the purpose of buying or selling pools. Pool tickets.
 1885, 342, § 2.

1 SECTION 2. Search warrants shall designate and describe the
 2 place to be searched and the articles to be searched for, and shall
 3 be directed to the sheriff or his deputy or to a constable or police
 4 officer, commanding him to search, in the day time, or if the war-
 5 rant so directs, in the night time, the house or place where the
 6 property or articles for which he is required to search are believed
 7 to be concealed, and to bring such property or articles when found,
 8 and the persons in whose possession they are found, before a court
 9 or trial justice having jurisdiction. Search war-
 rants, form of.
 R. S. 142, §§ 3, 4.
 G. S. 170, §§ 3, 4.
 P. S. 212, §§ 3, 4.
 1899, 166.
 2 Met. 329.
 5 Met. 98.
 3 Allen, 310.
 140 Mass. 147.
 145 Mass. 184.

1 SECTION 3. If an officer in the execution of a search warrant
 2 finds property or articles therein described, he shall seize and safely
 3 keep them under the direction of the court or trial justice, so long
 4 as is necessary for the purpose of being produced or used as evi-
 5 dence on any trial. As soon as may be afterward, all property
 6 seized under the provisions of clauses one and two of section one
 7 shall be restored to the owner thereof; property seized under the
 8 provisions of clause three of said section shall be disposed of as
 9 the court orders; property or other articles seized under the pro-
 10 visions of clause six of said section shall, if upon a hearing the
 11 court or magistrate finds that they were so kept or concealed, be
 12 destroyed or disposed of in accordance with the provisions of
 13 section seventy of chapter fifty-six by the board of health or by
 14 an officer designated by the court or magistrate; otherwise, they
 15 shall be returned to the owner; diseased animals seized under the
 16 provisions of clause seven of said section one shall, if upon a hear-
 17 ing the court or magistrate finds that they were kept or concealed in
 18 a particular building, place or enclosure, be destroyed or disposed
 19 of by the board of cattle commissioners, without compensation to
 20 the owners thereof; otherwise, they shall be returned to their own-
 21 ners; and all other articles seized by virtue of such warrants shall
 22 be adjudged forfeited and be destroyed or sold as hereinafter
 23 provided. Disposition of
 property
 seized.
 R. S. 142, § 5.
 G. S. 170, § 5.
 P. S. 212, § 5.
 1890, 452.
 1894, 410, § 1;
 491, § 14.
 1899, 408, § 16.
 5 Cush. 369.
 103 Mass. 456.

1 SECTION 4. Before a decree of forfeiture of property which
 2 has been seized under a search warrant is issued, the court or justice
 Notice to
 parties before
 forfeiture.

1870, 242, § 2.
P. S. 212, § 6.
1894, 410, § 1.

shall, unless otherwise expressly provided, issue a notice in writing under seal, signed by the clerk of the court or by the justice, setting forth the substance of the complaint, and commanding the persons, if any, in whose possession the articles were found, and the owner, if alleged, and all other persons who claim an interest therein, to appear at a time and place therein named to show cause why the articles seized should not be forfeited.

Service of notice.

1870, 242, § 3.
P. S. 212, § 7.
1894, 410, § 1.

SECTION 5. The notice shall, not less than fourteen days before the time appointed for trial, be served upon the person, if any, who is alleged to be the owner of the articles seized, by an officer authorized to serve criminal process, by leaving an attested copy thereof with him personally or at his usual place of abode and by posting an attested copy thereof on the house or building in which the articles were seized, if they were found in a house or building; otherwise, in a public place in the city or town in which they were seized.

Postponement of trial.

1870, 242, § 4.
P. S. 212, § 8.
1894, 410, § 1.

SECTION 6. If, at the time appointed for the trial, such notice has not been duly served, or if it appears necessary that any of the articles so seized should be kept longer for the purpose of being produced or used as evidence on any trial, or if other sufficient cause appears, the trial may be postponed to another day and place and further notice issued.

Sale or destruction of property seized.

1862, 168, § 5.
1869, 374, § 3.
P. S. 212, § 9.
1885, 66, § 1.
1894, 410, § 1.
1890, 359, § 8.
103 Mass. 456.
119 Mass. 332.
155 Mass. 165.

SECTION 7. If, upon the trial, the property is adjudged forfeited, the type, forms, press, wood cuts, raw material and mechanical apparatus described in clause eight of section one, the dies, plates, brands, moulds, engravings, printing presses, types or other tools, machines or materials described in clause five of said section, the raw materials, tools, machinery, implements, instruments and personal property described in clause nine of said section and all furniture, fixtures and personal property described in clause eleven of said section, or so much thereof as the court or justice may order, shall be sold by the sheriff and the proceeds shall be paid into the county treasury, and the remainder of the property shall be destroyed as the court or justice may order. Any article which is not found to have been unlawfully used or intended for unlawful use shall be delivered to the owner.

Appeal to superior court.

1870, 242, § 1.
P. S. 212, § 10.
1894, 410, § 1.

SECTION 8. A person who is aggrieved by a decree of forfeiture of a police, district or municipal court or trial justice may appeal therefrom to the superior court; but before his appeal is allowed, he shall recognize to the commonwealth in the sum of two hundred dollars, with sufficient surety or sureties, to prosecute his appeal and to pay all such expenses as may thereafter arise, if final judgment is rendered against the articles adjudged forfeited, and to abide the judgment of the superior court thereon; and upon such appeal, any question of fact shall be tried by a jury. All the proceedings in the superior court, including the right of exception, shall conform, so far as may be, to proceedings in criminal cases; and if, upon the final judgment, the articles are adjudged forfeited, they shall be disposed of under the direction of the superior court as they might have been disposed of had no appeal been taken.

REWARDS FOR APPREHENDING OFFENDERS.

1 SECTION 9. The governor, if in his opinion the public good
 2 so requires, may offer a suitable reward of not more than one
 3 thousand dollars in any one case to be paid by the commonwealth
 4 to any person who, in consequence of such offer, apprehends,
 5 brings back and secures a person who is convicted of or charged
 6 with a felony, who has escaped from prison in this commonwealth,
 7 or to any person who in consequence of such offer apprehends and
 8 secures a person charged with such crime, if the person cannot be
 9 arrested and secured in the common course of proceeding.

Governor may
 offer reward.
 1836, 4, § 18.
 G. S. 170, § 6.
 P. S. 212, § 11.

1 SECTION 10. The mayor and aldermen of a city or the select-
 2 men of a town, if in their opinion the public good so requires,
 3 may offer a suitable reward of not more than five hundred dollars
 4 in any one case to be paid by such city or town to any person
 5 who, in consequence of such offer, detects or secures a person who
 6 has committed a felony in such place, either before or after he has
 7 been charged therewith, and such reward shall be paid by the treas-
 8 urer upon the warrant of the mayor and aldermen or selectmen.
 9 If more than one claimant applies for the payment of such reward,
 10 the mayor and aldermen or selectmen shall determine to whom it
 11 shall be paid, and if to more than one person, in what proportion
 12 to each; and their determination shall be final.

Mayor, etc.,
 may offer
 reward.
 1840, 75.
 G. S. 170, §§ 7, 8.
 1866, 9.
 P. S. 212, §§ 12,
 13.
 7 Met. 409.
 5 Cush. 219.
 7 Gray, 272,
 374.
 8 Allen, 477.
 133 Mass. 233.
 156 Mass. 28.

FUGITIVES FROM JUSTICE.

1 SECTION 11. The governor, in any case which is authorized by
 2 the constitution and laws of the United States, may, upon demand,
 3 deliver to the executive of any other state or territory any person
 4 charged therein with treason, felony or other crime; or may, upon
 5 application, appoint an agent to demand of the executive authority
 6 of any other state or territory any such offender fleeing from the
 7 justice of this commonwealth. Such demand or application shall be
 8 accompanied by sworn evidence that the person charged is a fugitive
 9 from justice and by a duly attested copy of an indictment or com-
 10 plaint made before a court or magistrate authorized to receive it.
 11 Such complaint shall be accompanied by affidavits to the facts con-
 12 stituting the crime charged by persons who have actual knowledge
 13 thereof, and by such further evidence as the governor may require.

Delivery and
 demand of
 fugitive.
 1782, 31.
 1801, 10, § 1.
 1819, 76.
 R. S. 142, § 6.
 1859, 81.
 G. S. 177, § 1.
 P. S. 218, § 1.
 106 Mass. 223.
 112 Mass. 409.
 158 Mass. 149.

1 SECTION 12. Upon such demand or application, the attorney
 2 general or a district attorney shall, if the governor so requires,
 3 forthwith investigate the grounds thereof and report to the governor
 4 all the material facts which may come to his knowledge, with an
 5 abstract of the evidence in the case, and, in case of a person de-
 6 manded, whether he is held in custody or is under recognizance to
 7 answer for a crime against the laws of this commonwealth or of the
 8 United States or by force of any civil process, with an opinion as
 9 to the legality or expediency of complying therewith.

Proceedings.
 1834, 155, § 2.
 R. S. 142, § 7.
 G. S. 177, § 2.
 P. S. 218, § 2.

1 SECTION 13. If the governor is satisfied that the demand con-
 2 forms to law and ought to be complied with, he shall issue his war-

Warrant.
 1782, 31.
 1801, 10, § 2.

R. S. 142, § 7.
G. S. 177, § 3.
P. S. 218, § 3.
9 Gray, 262.
106 Mass. 223.
122 Mass. 324.

rant, under the seal of the commonwealth, to an officer authorized to serve warrants in criminal cases, directing him at the expense of the agent who makes the demand, at a time designated in the warrant, to take and transport such person to the boundary line of this commonwealth and there deliver him to such agent. Such officer may require aid as in criminal cases.

Opportunity to apply for writ of habeas corpus.
1857, 289, §§ 1, 2.
G. S. 177, §§ 4, 5.
P. S. 218, §§ 4, 5.

SECTION 14. A person who is arrested upon such warrant shall not be delivered to such agent of a state or territory until he has been notified of the demand for his surrender and has had an opportunity to apply for a writ of habeas corpus, if he claims such right of the officer who makes the arrest. If such writ is applied for, notice thereof and of the time and place of hearing shall be given to the attorney general or district attorney for the district in which the arrest is made. An officer who delivers a person in his custody upon such warrant to such agent for extradition without having complied with the provisions of this section shall forfeit not more than one thousand dollars.

Fees.
1801, 10, § 1.
R. S. 142, § 6.
G. S. 177, § 6.
P. S. 218, § 6.
1886, 267.

SECTION 15. If the application for the arrest of a fugitive from the justice of the commonwealth is complied with and an agent is appointed, his account shall be paid like other expenses in criminal cases by the county in which the proceedings are pending; but the governor may direct the whole or a part of such account to be paid by the commonwealth.

Arrest of person liable to be demanded by another state.
R. S. 142, § 8.
G. S. 177, § 7.
P. S. 218, § 7.
5 Met. 536.

SECTION 16. If a person who is found in this commonwealth is charged with a crime committed in another state or territory and is liable by the constitution and laws of the United States to be delivered upon the demand of the executive of such other state or territory, a court or magistrate authorized to issue warrants in criminal cases may, upon complaint under oath setting forth the crime and such other matters as are necessary to bring the case within the provisions of law, issue a warrant to bring the person charged before the same or another court or magistrate within the commonwealth to answer to such complaint as in other cases.

Recognizance.
R. S. 142, § 8.
G. S. 177, § 8.
P. S. 218, § 8.

SECTION 17. If, upon examination of the person charged, the court or magistrate has reasonable cause to believe that the complaint is true and that such person may be lawfully demanded of the executive, he shall, if not charged with a capital crime, be required to recognize with sufficient sureties in a reasonable sum to appear before such court or magistrate at a day appointed, allowing a reasonable time to obtain the warrant of the executive, and to abide the order of the court or magistrate.

Commitment on failure to recognize.
R. S. 142, § 9.
G. S. 177, § 9.
P. S. 218, § 9.

SECTION 18. If he does not so recognize, he shall be committed to jail until such day, as if the crime charged had been committed within the commonwealth; and if he fails to appear according to the condition of his recognizance, he shall be defaulted and like proceedings shall be had as in case of other recognizances entered into before such court or magistrate. If he is charged with a

7 capital crime, he shall be committed to jail until the day so ap-
8 pointed for his appearance.

1 SECTION 19. If the person so recognized or committed appears
2 before the court or magistrate upon the day appointed, he shall be
3 discharged unless he is demanded by a person authorized by the
4 warrant of the executive to receive him, or unless the court or
5 magistrate has cause to commit him or to require him to recognize
6 anew for his appearance on another day, and if, when ordered, he
7 does not so recognize, he shall be committed and detained as before.
8 If the person charged has recognized or is committed or discharged,
9 a person authorized by the warrant of the executive may at any
10 time take him into custody and the same shall be a discharge of
11 the recognizance and not be an escape.

Proceedings
and discharge.
R. S. 142, § 10.
G. S. 174, § 10.
P. S. 218, § 10.

1 SECTION 20. The complainant in such case shall be answerable
2 for all actual costs and charges and for the support in jail of a
3 person so committed, which shall be paid as by a creditor for his
4 debtor committed on execution. If the charge for support in jail
5 is not so paid, the jailer may discharge him as if he had been com-
6 mitted on execution.

Expenses.
R. S. 142, § 11.
G. S. 177, § 11.
P. S. 218, § 11.

ARREST, EXAMINATION, COMMITMENT AND BAIL.

1 SECTION 21. The justices of the supreme judicial court, of the
2 superior court, or of police, district or municipal courts, and trial
3 justices, may issue process for the apprehension of persons charged
4 with crime and to carry into effect the following provisions of this
5 chapter.

Warrants to
arrest, by
whom issued.
R. S. 135, § 1.
G. S. 170, § 9.
P. S. 212, § 14.
126 Mass. 239.

1 SECTION 22. Upon complaint made to any such justice that a
2 crime has been committed, he shall examine the complainant and
3 any witnesses produced by him, under oath, reduce the complaint
4 to writing and cause it to be subscribed by the complainant, and, if
5 it appears that a crime has been committed, he shall, except as
6 provided in the five following sections, issue a warrant, reciting the
7 substance of the accusation and requiring the officer to whom it is
8 directed forthwith to arrest the accused and to take him before
9 a court or trial justice of the county to be dealt with according to
10 law, and to summon such witnesses as shall be therein named to
11 appear and give evidence on the examination.

— how issued.
R. S. 135, § 2.
G. S. 170, § 10.
1881, 127.
P. S. 212, § 15.
1 Cush. 503.
4 Gray, 32.
8 Gray, 463.
9 Gray, 113, 283.
14 Gray, 382.
110 Mass. 67.
126 Mass. 238.
157 Mass. 556.
159 Mass. 101.

1 SECTION 23. Warrants and other processes issued for the appre-
2 hension of persons charged with crime may be directed to and
3 served by any officer authorized to serve criminal process in any
4 county.

— service of.
1886, 247.

1 SECTION 24. Upon a complaint for a crime within the jurisdic-
2 tion of trial justices, a summons shall be issued instead of a warrant
3 for arrest, unless, in the judgment of the court or magistrate re-
4 ceiving the complaint, there is reason to believe that the defendant
5 will not appear upon a summons.

Summons
instead of
warrant, when.
1881, 127, § 1.
P. S. 212, § 16.
1890, 225.

Service of
summons.
1881, 127, § 2.
P. S. 212, § 17.

SECTION 25. Such summons shall fix a day and hour of appearance for trial, and shall be served by an officer authorized to serve criminal process by giving to the defendant in hand or by leaving at his last and usual place of abode an attested copy, not less than twenty-four hours before the return hour.

Failure to obey
summons a
contempt.
1881, 127, § 3.
P. S. 212, § 18.

SECTION 26. If a defendant so summoned fails, without a reasonable cause, to appear and abide the orders of the court or magistrate, he shall be considered in contempt of court, and may be punished by a fine of not more than twenty dollars. A warrant may be issued at any time after the issue of such summons, if necessary, whether the summons has been served or not.

Recognizance.
1881, 127, § 4.
P. S. 212, § 19.

SECTION 27. If a defendant so summoned duly appears, he may be ordered to recognize for his further appearance, but he shall not be required to give surety upon his recognizance at any stage of the prosecution without a special order.

Service of
warrant out of
county.
1820, 52.
R. S. 135, § 3.
1846, 266.
G. S. 170, § 11.
P. S. 212, § 20.

SECTION 28. If a person against whom a warrant is issued under the provisions of chapter eighty-two or for any alleged offence, before or after the issuing of such warrant escapes from or is out of the county, the officer to whom such warrant is directed may pursue and apprehend him in any county, and for that purpose may command aid and exercise the same authority as in his own county.

Recognizance
out of county.
1692-3, 18, § 6.
1783, 51, § 1.
1784, 66, § 5.
1794, 26, §§ 1, 2.
1804, 143, § 17.
R. S. 135, § 4.
G. S. 170, § 12.
P. S. 212, § 21.
16 Mass. 198.
13 Pick. 86.
11 Gray, 465.
168 Mass. 471.

SECTION 29. If the crime charged in a warrant is not punishable by death or imprisonment in the state prison and the defendant requests to be taken before a magistrate of the county in which he was arrested, for the purpose of entering into a recognizance without a trial or examination, the officer who arrested him shall take him before a magistrate of that county, who may require from him a recognizance, with sufficient sureties, for his appearance at the court which has jurisdiction of the crime and next to be held in the county or judicial district in which it is alleged to have been committed, and the defendant shall thereupon be released.

Magistrate,
taking bail, to
return recogni-
zance to court,
etc.
R. S. 135, § 5.
G. S. 170, § 13.
P. S. 212, § 22.

SECTION 30. The magistrate who so admits the defendant to bail shall certify that fact upon the warrant, and deliver it with the recognizance to the officer, who shall cause it to be delivered without unnecessary delay to the clerk of the court before which the defendant was recognized to appear; and, upon application of the complainant, the magistrate who issued the warrant or the district attorney shall cause such witnesses as he thinks necessary to be summoned to the same court.

Proceedings if
prisoner not
bailed.
R. S. 135, § 6.
G. S. 170, § 14.
P. S. 212, § 23.

SECTION 31. If a person is arrested in a county other than that in which the crime was committed, and the magistrate before whom he is taken refuses to admit him to bail, or if no sufficient bail is offered, the officer shall take him before the court or trial justice to which or before whom the warrant is returnable.

1 SECTION 32. If the crime charged in a warrant is a felony, the
 2 officer who makes the arrest in another county shall convey the
 3 prisoner to the county in which the warrant was issued.

R. S. 135, § 7.

G. S. 170, § 15.

P. S. 212, § 24.

Conveyance of
prisoner to
county where
warrant
issued.

1 SECTION 33. A person who is arrested by warrant for a crime
 2 shall, unless other provision is made for his examination, be taken
 3 before a court or trial justice having jurisdiction where the crime
 4 was committed: and the warrant, with a proper return thereon
 5 signed by the person who made the arrest, shall be delivered to
 6 the court or justice.

Examination
of prisoner.

R. S. 135, § 8.

G. S. 170, § 16.

P. S. 212, § 25.

1 SECTION 34. The court or justice may adjourn an examination
 2 or trial from time to time, not exceeding ten days at any one
 3 time without the consent of the defendant, and to the same or a
 4 different place in the county. In the mean time, if the defendant is
 5 charged with a crime not bailable, he shall be committed: other-
 6 wise, he may be recognized in a sum and with sureties to the satis-
 7 faction of the court or justice, for his appearance for such further
 8 examination, and for want of such recognizance he shall be com-
 9 mitted.

Adjournment.

1821, 98, § 1.

R. S. 135, § 9.

G. S. 170, § 17.

P. S. 212, § 26.

145 Mass. 205.

175 Mass. 469.

1 SECTION 35. If the recognizor does not appear according to the
 2 condition of his recognizance, his default shall be recorded, but
 3 may be taken off for good cause at any time to which the case may
 4 be continued. If such default is not taken off, the recognizance
 5 shall be certified with a record of such default to the superior court,
 6 and like proceedings shall be had thereon as upon a breach of the
 7 condition of a recognizance for appearance before said superior
 8 court.

Default on
recognizance.

1821, 98, § 2.

R. S. 135, § 10.

G. S. 170, § 18.

P. S. 212, § 27.

1 SECTION 36. If the defendant fails to recognize, he may be com-
 2 mitted to jail by an order stating concisely that he is committed
 3 for further examination on a future day to be named in the order,
 4 and on the day appointed he may be brought before the court or
 5 justice by a verbal order to the officer who made the commitment,
 6 or by an order in writing to a different person.

Proceedings
if defendant
fails to recog-
nize.

R. S. 135, § 11.

G. S. 170, § 19.

P. S. 212, § 28.

1 SECTION 37. The court or justice before whom a person is taken
 2 upon a charge of crime shall, as soon as may be, examine the com-
 3 plainant and the witnesses for the prosecution under oath in the
 4 presence of the defendant, relative to any material matter con-
 5 nected with such charge. After the testimony to support the
 6 prosecution, the witnesses for the prisoner, if he has any, shall be
 7 examined under oath, and he may be assisted by counsel in such
 8 examination and in the cross examination of the witnesses in sup-
 9 port of the prosecution.

Conduct of
examination.

R. S. 135, §§ 12,

13.

G. S. 170, §§ 20,

21.

P. S. 212, §§ 29,

30.

11 Gray, 67.

1 SECTION 38. The court or justice may, while examining a wit-
 2 ness, exclude from the place of examination all the other witnesses,
 3 and may if requested, or if cause therefor appears, order the wit-
 4 nesses for or against the prisoner to be kept separate, so that they
 5 cannot converse with each other until they have been examined.

Separation of
witnesses.

R. S. 135, § 14.

G. S. 170, § 22.

P. S. 212, § 31.

Testimony
reduced to
writing, etc.
R. S. 135, § 15.
G. S. 170, § 23.
P. S. 212, § 32.

SECTION 39. The testimony of the witnesses examined shall be reduced to writing by, or under the direction of, the court or justice, if he considers it necessary, and shall, if required by him, be signed by the witnesses. 1 2 3 4

Discharged.
R. S. 135, § 16.
G. S. 170, § 24.
P. S. 212, § 33.

SECTION 40. If it appears, upon the whole examination, that no crime has been committed or that there is not probable cause for charging the prisoner therewith, he shall be discharged. 1 2 3

Bail or com-
mitment.
R. S. 135, § 17.
G. S. 170, § 25.
P. S. 212, § 34.

SECTION 41. If it appears that a crime has been committed and that there is probable cause to believe the prisoner guilty, the court or justice shall, if final jurisdiction is not exercised, admit the prisoner to bail, if the crime is bailable and sufficient bail is offered; otherwise, he shall be committed to jail for trial. 1 2 3 4 5

Prisoner may
be carried
through an-
other county.
1862, 216, § 1.
P. S. 212, § 35.

SECTION 42. If the journey from the town in which the prisoner is held to the town in which he is to be committed on the service of a mittimus can be made by railroad, the officer may convey the prisoner through any portion of another county in the prosecution of such journey by railroad. 1 2 3 4 5

Certificate of
expenses.
1890, 440, § 10.

SECTION 43. If the defendant is held to appear before the grand jury, the copies and record of proceedings sent to the superior court shall contain the details of all fees and expenses allowed or paid in the police, district or municipal court or before the trial justice. 1 2 3 4 5

Witnesses to
recognize.
R. S. 135, § 18.
G. S. 170, § 26.
P. S. 212, § 36.

SECTION 44. If the prisoner is admitted to bail, or is committed, the court or justice shall bind by recognizance the material witnesses against the prisoner to appear and testify at the next sitting of the court having jurisdiction of the crime and in which the prisoner shall be held to answer. 1 2 3 4 5

Same subject.
1885, 136, § 1.

SECTION 45. If the examination or trial of a defendant who is charged with a crime punishable with death or imprisonment for life is adjourned under the provisions of section thirty-four, the court or justice may bind by recognizance the principal witnesses against the prisoner to appear and testify at the time and place to which the trial or examination is adjourned. 1 2 3 4 5 6

Sureties re-
quired, when.
R. S. 135, § 19.
G. S. 170, § 27.
P. S. 212, § 37.
1885, 136, § 2.

SECTION 46. The court or justice, if satisfied that there is good cause to believe that a witness will not perform the condition of his recognizance unless other security is given, may order the witness to enter into a recognizance with such sureties as may be deemed necessary for his appearance at court. 1 2 3 4 5

Recognizances
by minors.
R. S. 135, § 20.
G. S. 170, § 28.
P. S. 212, § 38.
1885, 136, § 2.
168 Mass. 471.

SECTION 47. If a minor is a material witness, any other person may be allowed to recognize for his appearance; or, in the discretion of the court or justice, he may recognize in a sum not exceeding fifty dollars, which shall be valid and binding in law notwithstanding his minority. 1 2 3 4 5

Commitment
of witness.
R. S. 135, § 21.

SECTION 48. A witness who, when required, refuses to recognize, either with or without sureties, shall, except as provided in 1 2

3 the following section, be committed to jail until he complies with
 4 such order or is otherwise discharged according to law; but if the
 5 magistrate finds that the witness, unless he is the prosecutor or an
 6 accomplice, is unable to procure sureties when so ordered, he shall,
 7 except in cases of felony, be discharged upon his own recognizance.
 8 Upon a complaint or indictment for a felony, against a defendant
 9 who is not in custody, a material witness who is committed for
 10 failure to furnish sureties upon his own recognizance may be held
 11 in custody for a reasonable time, pending the pursuit and appre-
 12 hension of the defendant.

G. S. 170, § 29.
 1872, 214, § 1.
 P. S. 212, §§ 39,
 40,
 1885, 136, § 2.
 1892, 361.

1 SECTION 49. A magistrate may, with the consent of the de-
 2 fendant, take or cause to be taken by a magistrate authorized to
 3 take depositions in civil cases, in manner and form as provided in
 4 civil cases, the deposition of a witness whom he finds to be unable
 5 to furnish sureties upon his recognizance as ordered and who is not
 6 the prosecutor or an accomplice; and thereupon the witness shall
 7 be discharged. The attorney for the commonwealth who will have
 8 charge of the case at the trial shall have the same notice as parties
 9 in civil actions of the time and place of taking the deposition, and
 10 the assent of the defendant shall be indorsed upon the deposition.
 11 The fees shall be the same as in civil cases and shall be paid as
 12 other expenses in criminal cases are paid. The deposition shall
 13 be seasonably transmitted to the court at which the witness was
 14 ordered to appear. If the witness is unable to attend the trial, by
 15 reason of his absence from the commonwealth, so that he cannot be
 16 compelled to attend by subpoena or attachment, or of his death,
 17 insanity, illness or infirmity, the deposition may be read in evi-
 18 dence upon the trial by either party, subject to all legal objections.

Deposition of
 witness.
 1851, 71.
 G. S. 170, §§ 30,
 31.
 P. S. 212, §§ 40,
 41.
 1885, 136, § 2.

1 SECTION 50. If a witness has been committed because of his
 2 inability to furnish sureties for his appearance before the superior
 3 court, the jailer shall forthwith give notice to the chief justice of
 4 the superior court, who shall direct the district attorney to inquire
 5 as to the importance of his testimony and the necessity for detaining
 6 him in jail, and the district attorney, if, in his opinion, the public
 7 interest will not suffer by the release of the witness on his own
 8 recognizance, shall so report to the chief justice, who may thereupon
 9 order the witness to be released upon his own recognizance.

Discharge on
 recognizance,
 when.
 1894, 406, § 1.

1 SECTION 51. The prison commissioners shall from time to time
 2 make such rules relative to the diet, size of cells, amount of
 3 liberty and exercise, correspondence, visits and such other matters
 4 as they consider necessary regulating the treatment of witnesses
 5 held in jail as will secure their clear distinction and separation from
 6 other prisoners as far as possible, consistent with their safe custody
 7 and the prevention of tampering with their testimony. Said com-
 8 missioners may, with the approval of the district attorney, remove
 9 such witnesses from the jail in which they are confined to a jail in
 10 another county, and shall, at the request of the district attorney,
 11 cause them to be returned to the jail whence they were removed.
 12 The proceedings upon such removal shall be the same as are pro-
 13 vided for the removal of prisoners from one jail or house of correc-
 14 tion to another. The cost of support of a witness so removed and

Treatment of
 witnesses in
 jail.
 1894, 270.

the cost of both removals shall be paid by the county from which he is removed. 15
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Transporta-
tion of male
and female
prisoners.
1894, 173.

SECTION 52. An officer having the custody or control of prisoners, who causes or permits male and female prisoners to be transported together to or from a court in a van or other carriage, in a city having more than thirty thousand inhabitants according to the latest census, shall be punished by a fine of not more than twenty dollars. 1
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Treatment by
officers of
witnesses in
custody.
1894, 169.

SECTION 53. An officer having the custody of a witness who has been committed because of his failure to furnish sureties, who causes or permits him to be handcuffed to a person who is held in custody charged with or sentenced for crime, or to be transported within a city to or from any court or prison in a van or carriage with such person, shall be punished by a fine of not more than twenty dollars. 1
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Discharge, if
injured party
satisfied.
R. S. 135, § 25;
136, § 27.
1846, 198.
G. S. 170, § 33;
171, § 28.
P. S. 212, § 43;
213, § 36.
12 Allen, 402.
115 Mass. 136.
120 Mass. 403.

SECTION 54. If a person who is committed to jail is under indictment or complaint for, or is under recognizance to answer to, a charge of assault and battery or other misdemeanor for which he is liable in a civil action, unless the offence was committed by or upon a sheriff or other officer of justice, or riotously, or with intent to commit a felony, and the person injured appears before the court or justice who made the commitment or took the recognizance, or before which the indictment or complaint is pending, and acknowledges in writing that he has received satisfaction for the injury, the court or justice may in its or his discretion, upon the payment of such expenses as it or he shall order, discharge the recognizance or supersede the commitment, or discharge the defendant from the indictment or complaint, and may also discharge all recognizances and supersede the commitment of all witnesses in the case. 1
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— a bar to civil
action.
R. S. 135, § 26;
136, § 27.
G. S. 170, § 34;
171, § 28.
P. S. 212, § 44;
213, § 36.
12 Allen, 402.

SECTION 55. Such order discharging the recognizance, indictment or complaint of the person or the recognizance of witnesses shall be filed in the office of the clerk before the sitting of the court at which they are bound to appear; and such order superseding the commitment of the person charged or of a witness shall be delivered to the keeper of the jail in which he is confined, who shall forthwith discharge him; and such order, so filed and delivered, shall forever bar a civil action for such injury. 1
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What magis-
trates may
admit to bail.
1812, 30.
R. S. 135, § 22.
1851, § 2, § 2.
1855, 205, § 1.
G. S. 170, § 36.
1874, 306, § 4.
1878, 188, § 4.
1879, 228.
P. S. 212, § 46.
1898, 411, § 1.

SECTION 56. A justice of the supreme judicial court or of the superior court, a standing or special commissioner appointed by either of said courts, a justice or clerk of a police, district or municipal court, a master in chancery or a trial justice, upon application of a prisoner held under arrest or committed, either on a warrant or without one, or held in the custody of an officer under a mittimus, may inquire into the case and admit such prisoner to bail; and may admit to bail any person who is committed for not finding sureties to recognize for him. All persons authorized to take bail under the provisions of this section shall be governed by 1
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11 the rules established by the supreme judicial court or the superior
12 court.

1 SECTION 57. If the person is committed without an order fixing
2 the amount of the recognizance, he shall not be admitted to bail
3 under the provisions of the preceding section until reasonable
4 notice of his application has been given to the officer by whom he
5 was committed, or a hearing has been given to the officer in whose
6 custody he is held; and if committed with such order, he shall not
7 be admitted to bail, except by a justice of the supreme judicial
8 court or of the superior court, for a less amount than is required by
9 the order.

Notice to officer
if bail not
fixed.
1851, 92, § 2.
1855, 265, § 1.
G. S. 170, § 37.
1879, 89.
P. S. 212, § 47.
107 Mass. 227.

1 SECTION 58. After a conviction or a plea of guilty or of nolo
2 contendere in the superior court in the county of Suffolk, the
3 prisoner shall not be admitted to bail except in open court; but
4 when said court is not in session, bail may be taken by any judge
5 of a court of record or by any commissioner appointed by the
6 justices of the superior court, upon proof that written notice of
7 the proposed application has been duly served upon the district
8 attorney or one of the assistant district attorneys for the Suffolk
9 district at least twenty-four hours before the hearing of such appli-
10 cation, specifying the name of the prisoner, the crime of which
11 he has been convicted, the time and place of hearing and the name,
12 occupation and residence of the proposed sureties. No person who
13 has been once offered and rejected as surety shall afterward be
14 accepted as surety for the same person in the same case.

Bail in Suffolk
county.
1862, 159, § 1.
P. S. 212, § 48.
151 Mass. 392.

1 SECTION 59. If bail is taken out of court, the person author-
2 ized to take bail in criminal cases shall cause a certificate to be
3 signed and sworn to by each surety, which shall contain the name,
4 the residence, including the name of the street and number of the
5 dwelling house thereon, the occupation and place of business of the
6 surety, a statement of the nature, location and value of his property
7 and of the incumbrances, if any, thereon, the amount of his indebted-
8 ness and all other matters pertinent to the amount and value of such
9 property, and shall return a proper recognizance to the proper court.

Certificate of
sureties.
1862, 159, § 2.
P. S. 212, § 49.
1898, 411, § 2.
107 Mass. 230.
119 Mass. 317.

1 SECTION 60. If application is made to a person authorized to
2 take bail in criminal cases within the county of Suffolk to accept
3 bail out of court in a case in which no amount has been fixed, he
4 shall, if the crime charged is not within the jurisdiction of the
5 municipal court of the city of Boston, before fixing bail, cause
6 notice of such application to be given to the district attorney or
7 one of the assistant district attorneys for the Suffolk district, if
8 any of said attorneys is at the time within said district.

Notice to dis-
trict attorney.
1862, 159, § 3.
P. S. 212, § 50.
1898, 411, § 3.

1 SECTION 61. No justice of any court shall receive any fee or
2 compensation for taking and approving bail in criminal cases in
3 the county of Suffolk. 1879, 254, § 1. P. S. 212, § 51. 1885, 135.

No fees for
taking bail,
when.
1862, 159, § 5.

1 SECTION 62. Persons who are committed to jail on the Lord's
2 day, or on the preceding evening or afternoon, may, in the discre-
3 tion of the magistrate, be admitted to bail on that day. 168 Mass. 519.

Bail on the
Lord's day.
1855, 265, § 2.
G. S. 170, § 38.
P. S. 212, § 52.

Condition of
recognizances.
1845, 166, § 2.
G. S. 170, § 39.
1878, 188, § 1.
P. S. 212, § 53.
7 Gray, 316.
119 Mass. 317.
143 Mass. 214.
172 Mass. 431.

SECTION 63. The condition of a recognizance of a person, either with or without surety, which binds him to appear before a court or trial justice to answer to a charge against him or to prosecute an appeal shall be so framed as to bind him personally to appear at the time so expressed, and at any subsequent time to which the case may be continued, unless previously surrendered or discharged, and so from time to time, until the final decree, sentence or order of the court thereon, and to abide such final sentence, order or decree, and not depart without leave.

Return of re-
cognizance and
examination
to court.
R. S. 135, § 24.
G. S. 170, § 40.
P. S. 212, § 54.
9 Allen, 371.

SECTION 64. A recognizance and examination which is taken by a magistrate under the provisions of this chapter shall be certified and returned by him to the district attorney or the clerk of the court before which the person charged is bound to appear, on or before the first day of the sitting thereof; and if he refuses or neglects to return the same, he may be compelled forthwith by order of court, and, in case of disobedience, may be proceeded against as for contempt.

Forfeiture of
bail a bar to
further bail.
1862, 163, § 1.
1874, 306, § 1.
1879, 87.
P. S. 212, § 55.
1901, 215.
13 Allen, 396.
126 Mass. 224.

SECTION 65. A person who, being arrested on a criminal charge, forfeits or makes default upon his bail bond or recognizance or has been surrendered by a probation officer shall not be again released upon further bail or recognizance in the same case, unless by order of a justice of the court in which such charge was pending at the time of said default or of such surrender by a probation officer.

Surrender of
principal
before default.
New bail.
1863, 59, § 1.
P. S. 212, § 56.

SECTION 66. Bail in criminal cases may exonerate themselves at any time before default upon their recognizance by surrendering their principal into court or to the jailer in the county in which the principal is held to appear. They shall deliver to the jailer their principal, with a certified copy of the recognizance, and he shall be received and detained by the jailer, but may be again bailed in the same manner as if committed for not finding sureties to recognize for him.

Remission of
penalty after
default.
1863, 59, § 2.
P. S. 212, § 57.

SECTION 67. Bail may surrender their principal at any time after default made upon the recognizance, in the manner provided in the preceding section; and the court in which the default is recorded may, upon application, remit the whole or any part of the penalty, if satisfied that the default of the principal was not with the connivance or consent of the bail.

Exoneration if
unable to
surrender
principal.
1859, 131.
G. S. 170, § 43.
P. S. 212, § 58.

SECTION 68. If, by the act of God, of the government of the United States, of any state or by sentence of law, bail are unable without their fault to surrender their principal, they shall, upon motion before final judgment on the scire facias, be exonerated and discharged by the court, with or without costs as the court deems equitable.

Default on
recognizance.
1813, 182, § 2.
R. S. 135, § 27.
1845, 166, § 3.
G. S. 170, § 46.
P. S. 212, § 59.

SECTION 69. If a person who is under recognizance to appear and answer or to prosecute an appeal in a criminal case fails to appear for that purpose according to the condition of his recognizance, and if a person under recognizance to testify in a criminal prosecution fails to perform the condition of his recognizance, his default may be recorded, his obligation and that of his sureties

7 shall be forfeited and process shall be issued against them or such
8 of them as the prosecuting officer directs ; but in such suit no costs
9 shall be taxed for travel.

1 SECTION 70. A surety in such recognizance may, by leave of
2 the court, after default, and either before or after process has been
3 issued against him, pay to the county treasurer or clerk of the
4 court the amount for which he was bound as surety, with such costs
5 as the court shall direct, and shall be thereupon forever discharged.

Surety may
pay amount of
recognizance,
etc.
R. S. 135, § 28.
G. S. 170, § 47.
P. S. 212, § 60.

1 SECTION 71. If, upon suit brought on a recognizance to prose-
2 cute an appeal, the penalty is adjudged to be forfeited, or if by
3 leave of court such penalty has been paid to the county treasurer
4 or the clerk of the court without a suit or before judgment, as
5 provided in the preceding section, and any forfeiture accrues by
6 law to a person by reason of the crime of which the appellant was
7 convicted, the court may award to him the portion of the amount
8 paid to which he is entitled.

Award of
forfeiture out
of penalty of
recognizance.
R. S. 138, § 9.
G. S. 173, § 6.
P. S. 212, § 61.

1 SECTION 72. If the penalty of a recognizance of a party or wit-
2 ness in a criminal prosecution is adjudged forfeited, the court may
3 render judgment, upon such terms as it may order, against the
4 principal or surety, or both, for the whole of the penalty with in-
5 terest, or, in its discretion, upon application of the defendant in
6 the judgment for a part thereof only.

Action and
judgment on
recognizance.
1810, 80.
R. S. 135, § 29.
G. S. 170, § 48.
P. S. 212, § 62.
14 Mass. 65.
141 Mass. 577.

1 SECTION 73. Such action shall not be barred or defeated, nor
2 shall judgment be arrested, by reason of neglect or omission to
3 note or record the default of any principal or surety at the time
4 when it happens, nor by reason of a defect in the form of the
5 recognizance, if it sufficiently appears from the tenor thereof at
6 what court the party or witness was bound to appear, and that the
7 court or magistrate before whom it was taken was authorized by
8 law to require and take such recognizance.

Irregularities
not to defeat
action.
R. S. 135, § 30.
G. S. 170, § 49.
P. S. 212, § 63.
9 Met. 407.
7 Gray, 316.
138 Mass. 204.
143 Mass. 210.

1 SECTION 74. A court which has rendered judgment on a re-
2 cognizance the penalty of which is forfeited may, upon the petition
3 of any person interested, stating the ground relied upon and filed
4 in the county in which the judgment was rendered, grant a review
5 and a rehearing of the case, upon the surrender or recaption of the
6 prisoner who was released, or for any sufficient cause which has
7 occurred or been ascertained by the person interested after the
8 rendition of such judgment, or at such time as not to have afforded
9 opportunity for presenting the same in evidence.

Review of
judgment on
forfeited re-
cognizance.
1852, 126, § 1.
G. S. 170, § 50.
P. S. 212, § 64.

1 SECTION 75. Notice of the petition and a copy thereof shall be
2 given to or served upon the district attorney for the county in
3 which the petition is pending fourteen days at least before the return
4 day expressed therein, and such notice shall be returnable on the
5 first Monday of the first or second month after the filing of the
6 petition.

—petition for.
1852, 126, § 2.
G. S. 170, § 51.
P. S. 212, § 65.

1 SECTION 76. If the court finds that a part of the judgment has
2 been actually paid to or for the county upon the recognizance or

Proceedings
if former
judgment
diminished.

1852, 126, §§ 3, 4.
G. S. 170, §§ 52,
53.
P. S. 212, §§ 66,
67.

judgment and orders the judgment to be reversed or entered for a
less amount than has been so actually paid, it may order the amount
of the difference between the payment and the new judgment to
be paid back to the person who made the payment or to his legal
representatives. The treasurer or other officer of the county who
received or then has the amount paid shall, upon presentation of
a copy of the order certified by the clerk of the court, make said
repayment. If, upon such petition, the review is not granted or
the original judgment is not altered, the court may award reason-
able costs against the petitioner.

Deposit in lieu
of recogni-
zance.
1879, 126, § 1.
P. S. 212, § 68.
1882, 134.
172 Mass. 427.

SECTION 77. If a person who is arrested on criminal process has
been ordered to recognize with surety or sureties for his appear-
ance before any court or trial justice, he may, instead of giving
surety or sureties, at any time give his personal recognizance, and
deposit the amount of the bail which he is ordered to furnish with
the court, trial justice or magistrate authorized by law to take such
recognizance who shall give him a certificate thereof, and upon
delivering said certificate to the officer in whose custody he is, he
shall be released. The court, trial justice or magistrate shall forth-
with, upon the receipt of such amount, deposit it with the clerk of
the court or with the trial justice before whom such person was
recognized to appear, or if such court has no clerk, shall deposit it
with the justice thereof.

Upon default
money to be
paid to county.
1879, 126, § 3.
P. S. 212, § 70.

SECTION 78. Upon the default of the defendant, such court,
trial justice or magistrate may at any time thereafter order the
money deposited as aforesaid to be forfeited, and the said justice,
trial justice or magistrate with whom said deposit is made shall
thereupon pay over the money to the county treasurer.

Self-surrender
of defendant.
1879, 126, §§ 2, 4.
P. S. 212, §§ 69,
71.

SECTION 79. The defendant may surrender himself at any time
before a default in the same manner as sureties in criminal cases
may surrender their principal, and the court shall thereupon order
the money so deposited to be returned to him or his order. The
defendant, at any time after a default, may so surrender himself
and the court may thereupon order the whole or any part of the
money so deposited to be returned to him.

"Magistrate"
includes bail
commissioner.
1874, 306, § 5.
P. S. 212, § 73.

SECTION 80. The term "magistrate", in any section of the
statutes which provides for admitting persons to bail in criminal
cases, shall be construed to include a bail commissioner, so far as to
give him authority to act in any case of admitting prisoners to bail.

PROBATION OFFICERS.

Probation
officers.
1880, 129, § 1.
P. S. 212, § 74.
1882, 125.
1891, 336, § 1.
1892, 242, 276,
§§ 1, 3.
1897, 266, §§ 1, 3.
1898, 511, § 1.

SECTION 81. The superior court may appoint probation officers
and the justice of each police, district or municipal court and the
chief justice of the municipal court of the city of Boston shall ap-
point one probation officer. Said chief justice may also appoint
not more than five male and two female assistant probation officers.
Each probation officer and assistant probation officer so appointed
shall hold his office during the pleasure of the court which makes
the appointment.

1 SECTION 82. The justice of a police, district or municipal court
2 may, in the absence of the probation officer, appoint a probation
3 officer pro tempore, who shall have the powers and perform the
4 duties of the probation officer, and who shall receive from the
5 county as compensation for each day's service an amount equal to
6 the rate by the day of the compensation of the probation officer;
7 but compensation so paid for any excess over fourteen days' service
8 by a probation officer pro tempore in any one calendar year shall
9 be deducted by the county treasurer from the compensation of the
10 probation officer.

Probation
officers pro
tempore.
1894, 372.

1 SECTION 83. Said probation officers shall not be active members
2 of the regular police force, but so far as necessary in the perform-
3 ance of their official duties shall have all the powers of police
4 officers, and if appointed by the superior court may, by its direction,
5 act in any part of the commonwealth and shall report to the court.
6 Their records may at all times be inspected by the chief of police
7 or city marshal of any city or town, or by the board of police for
8 the city of Boston.

Powers; in-
spection of
records.
1880, 129, §§ 1, 5.
P. S. 212, § 74.
1891, 356, § 2.
1898, 511, § 1.

1 SECTION 84. Each probation officer shall inquire into the na-
2 ture of every criminal case brought before the court under the
3 appointment of which he acts, and may recommend that any per-
4 son convicted thereby be placed upon probation. Female assistant
5 probation officers shall investigate the cases of all women charged
6 with crime in the municipal court of the city of Boston and per-
7 form such other duties as the justices of said court may require.
8 Each probation officer shall keep full records of all cases investi-
9 gated by him, of all cases placed in his care by the court, and of
10 any other duties performed by him. The court may place the per-
11 son so convicted in the care of a probation officer for such time and
12 upon such conditions as may seem proper. The superior court
13 may also place upon probation under any of its probation officers
14 any person charged before it with crime. Each person released
15 upon probation shall be furnished by the probation officer with a
16 written statement of the terms and conditions of his release.

Duties.
1880, 129, §§ 3-5.
P. S. 212, §§ 75-
77.
1891, 356, §§ 3, 4.
1892, 276, § 2.
1897, 266, § 2.
1898, 511, § 1.

1 SECTION 85. The probation officers of such police, district and
2 municipal courts as the prison commissioners shall from time to
3 time designate shall give such information relative to their work
4 to said commissioners as they shall request and shall report to said
5 commissioners, upon forms to be furnished by them, such facts as
6 the commissioners desire relative to all cases brought before said
7 courts which are investigated by said officers, and relative to the
8 cases of all persons placed on probation in their custody. The
9 prison commissioners shall keep a record of all cases reported to
10 them, in a form convenient for reference.

Same subject.
1880, 129, § 2.
P. S. 212, § 80.
1891, 356, § 5.
1900, 449, § 3.

1 SECTION 86. If, in the opinion of a probation officer of a police,
2 district or municipal court, a person who is arrested within the
3 jurisdiction of the court by which he is appointed resides within
4 the jurisdiction of another court, he shall forthwith apply for
5 information relative to such person to the prison commissioners
6 and they shall forthwith furnish to him such information as they

Same subject.
1900, 449, § 4.

have or can obtain through other probation officers or police officials. They shall also send to the probation officer of the court within the jurisdiction of which such person resides such information as they receive relative to such case. Police officers of cities and towns shall co-operate with such probation officers and with said commissioners, in obtaining information, and said probation officers shall assist each other and said commissioners in their duties. The commissioners shall give to the board of police for the city of Boston, to all chiefs of police and to city marshals all the information which they have in any case relative to which said police officials may inquire.

Conferences
between com-
missioners,
courts and
officers.
1900, 449, § 5.

SECTION 87. The prison commissioners shall, from time to time, confer with the justices of the several courts for the purpose of securing an improvement of the probation service, of promoting uniformity in the performance of the duties of probation officers and of obtaining a better co-ordination of their work. They shall also confer with the probation officers of said courts and give them such assistance as will promote the best interests of the service.

— between pro-
bation officers.
1900, 449, § 6.

SECTION 88. If the prison commissioners are of opinion that a conference of any or all of the probation officers and assistant probation officers will secure their better co-operation with each other and will promote the efficiency of their work, they shall cause such conference to be held, and one of the commissioners shall preside over it.

Report and
recommenda-
tions.
1900, 449, § 7.

SECTION 89. The prisons commissioners shall annually, in November, report to the governor on the operation of the probation system and its results, and make recommendations for the improvement of the service.

Assistance, etc.
1900, 449, § 8.

SECTION 90. Said commissioners shall be provided with such additional office accommodations as they may need and the necessary facilities for carrying on the work required by the five preceding sections, and may employ such assistance as the governor and council shall from time to time authorize.

Notice to
prison com-
missioners.
1880, 129, § 2.
P. S. 212, § 74.
1891, 356, § 5.
1898, 511, § 3.

SECTION 91. Upon the appointment or removal of a probation officer or assistant probation officer, the clerk of the court by which the appointment or removal is made shall forthwith give notice to the prison commissioners of the officer so appointed or removed.

Compensation.
1891, 356, § 6.
1892, 276, § 1.
1897, 266, § 1.
1898, 511, § 2.

SECTION 92. The compensation of each probation officer and assistant probation officer of a police, district or municipal court shall be determined by the justice thereof, subject to the approval of the county commissioners, and shall be paid by the county, upon vouchers approved by said justice and the county commissioners, or, in the county of Suffolk, by the institutions commissioner. The salary of each probation officer who is appointed by the superior court shall be determined by the court, and shall be apportioned by it from time to time among the counties wherein said officer performs his services.

1 SECTION 93. The reasonable expenses incurred by probation
 2 officers of the superior court in the performance of their duties shall
 3 be approved and apportioned by the court, and paid by the county
 4 to which they are thus apportioned. Probation officers of police,
 5 district and municipal courts shall be reimbursed by the county for
 6 their actual disbursements for necessary expenses incurred while in
 7 the performance of their duties, including their reasonable travel-
 8 ling expenses in attending the conferences authorized by section
 9 eighty-eight, not exceeding two hundred dollars to each in any one
 10 year, upon vouchers approved by the justice by whom they are
 11 appointed.

Expenses.
 1894, 229.
 1898, 511, § 2.
 1900, 279; 449,
 § 6.

1 SECTION 94. A police, district or municipal court may authorize
 2 a probation officer to expend such amount as the court considers
 3 expedient for the temporary support or transportation, or both, of
 4 a person placed on probation, and such amount shall be repaid to
 5 the probation officer by the county upon vouchers approved by the
 6 court. A record of any amount so authorized shall be entered on
 7 the clerk's docket of the case.

Support of
 probationers.
 1894, 368.

1 SECTION 95. A probation officer or assistant probation officer
 2 who refuses or neglects to perform any of the duties required of
 3 him by the seven preceding sections shall forfeit two hundred
 4 dollars to the use of the commonwealth.

Penalty for
 neglect of
 duties.
 1891, 356, § 8.
 1892, 276, § 3.

1897, 266, § 3.

1 SECTION 96. Every probation officer shall inform the court, so
 2 far as is possible, whether a person on trial has previously been
 3 convicted of crime.

Information to
 court of prior
 convictions.

1880, 129, § 11.

P. S. 212, § 79.

1 SECTION 97. The provisions of the eleven preceding sections
 2 shall not authorize a probation officer to interfere with any of the
 3 duties required of the state board of charity, under the provisions
 4 of law relative to juvenile offenders.

Duties of state
 board of
 charity not
 affected.
 1880, 129, § 12.
 P. S. 212, § 81.

1886, 101, § 4.

1891, 356, § 9.

CHAPTER 218.

OF INDICTMENTS AND PROCEEDINGS BEFORE TRIAL.

SECTIONS 1-14. — Grand Jury.

SECTIONS 15-45. — Indictments and Complaints.

SECTIONS 46-51. — Venue of Specific Crimes.

SECTIONS 52, 53. — Limitation of Criminal Prosecutions.

SECTIONS 54-67. — Arrest, Arraignment and Other Proceedings.

GRAND JURY.

1 SECTION 1. The clerk of the courts for each county, except the
 2 county of Suffolk, shall, not less than seven nor more than thirty
 3 days before the commencement of the first sitting of the superior
 4 court for criminal business in each year, issue writs of venire facias
 5 for twenty-three grand jurors to be returned to that court, who
 6 shall serve until the first regular sitting in the year next after they
 7 have been impanelled and until another grand jury has been im-

Grand jurors.
 C. L. 86, § 2.
 1694-5, 24, § 1.
 1784, 4, §§ 1, 2.
 1807, 146, § 4.
 1832, 130, § 6.
 R. S. 136, § 1.
 1840, 74.
 G. S. 171, § 1.
 1860, 143.
 P. S. 213, § 1.
 1897, 490, § 7.

2 Cush. 149.
119 Mass. 331.
171 Mass. 459.

panelled in their stead. In counties in which sittings of the court are established for the transaction of criminal business, they shall be required to attend only at such sittings.

Grand jurors
in Suffolk.
1844, 44, § 3.
G. S. 171, § 2.
1860, 143.
P. S. 213, § 2.

SECTION 2. The clerk of the superior court for criminal business in the county of Suffolk shall, not less than seven nor more than fourteen days before each sitting commencing on the first Monday of January and July, issue writs of venire facias for twenty-three grand jurors to serve in said court, twenty-two of whom shall be drawn and returned from the city of Boston, and one from Chelsea, Revere or Winthrop, who shall serve for each sitting thereof for six months and until another grand jury has been impanelled in their stead.

Jurors, how
drawn, etc.
R. S. 136, § 3.
G. S. 171, § 3.
P. S. 213, § 3.

SECTION 3. Grand jurors shall be drawn, summoned and returned in the same manner as traverse jurors; and, if drawn at the same time with traverse jurors, the number of persons required whose names are first drawn shall be returned as grand jurors, and those whose names are afterward drawn shall be returned as traverse jurors.

— deficiency,
supply of.
1784, 7, § 6.
1807, 140, § 7.
R. S. 136, § 4.
G. S. 171, § 4.
P. S. 213, § 4.

SECTION 4. If there is a deficiency of grand jurors, writs of venire facias may be issued to the constables of such cities or towns as the court orders to return forthwith such further number of grand jurors as may be required.

119 Mass. 331.

Impanelling
and oath.
C. L. 167, § 2.
1692-3, 35.
1784, 4, § 1.
1807, 140, §§ 10,
14.
R. S. 136, § 5.
G. S. 171, § 5.
P. S. 213, § 5.
157 Mass. 516.

SECTION 5. The clerk of the court shall prepare an alphabetical list of the names of all persons returned as grand jurors, and, when they are to be impanelled, the first two persons named thereon shall be first called, and the following oath shall be administered to them:—

You, as grand jurors of this inquest for the body of this county of ———, do solemnly swear that you will diligently inquire, and true presentment make, of all such matters and things as shall be given you in charge; the commonwealth's counsel, your fellows' and your own, you shall keep secret; you shall present no man for envy, hatred or malice, neither shall you leave any man unrepresented for love, fear, favor, affection or hope of reward; but you shall present things truly, as they come to your knowledge, according to the best of your understanding; so help you God.

The other jurors shall then be called in such divisions as the court considers proper, and the following oath shall be administered to them:—

The same oath which your fellows have taken on their part, you and each of you on your behalf shall well and truly observe and keep; so help you God.

Affirmation in
lieu of oath.
1807, 140, § 14.
R. S. 136, § 6.
G. S. 171, § 6.

SECTION 6. If a person who is returned as a grand juror is conscientiously scrupulous of taking the oath prescribed, he may affirm.

P. S. 213, § 6.

168 U. S. 567.

Foreman.
1807, 140, § 10.
R. S. 136, § 7.
G. S. 171, § 7.
P. S. 213, § 7.
116 Mass. 61.

SECTION 7. After the grand jurors have been impanelled and have received their charge from the court, they shall retire with the officer appointed to attend them, and shall forthwith, by ballot,

4 elect one of their number to be foreman and give notice thereof to
5 the court, and the clerk shall record the same.

1 SECTION 8. The foreman so elected shall be foreman for the
2 whole period the grand jurors are required to serve, but in his ab-
3 sence another foreman shall be elected in the same manner, who
4 shall perform the duties during such absence, and, in case of the
5 death of the foreman, for the residue of their period of service.

Foreman,
duty and
term of service
of. Foreman
pro tempore.
1832, 139, § 6.
R. S. 136, § 8.
G. S. 171, § 8.
P. S. 213, § 8.

1 SECTION 9. The foreman of the grand jury or the prosecuting
2 officer before them may administer oaths and affirmations to wit-
3 nesses who appear to testify before the jury, and the foreman shall
4 under his hand return to the court a list of all witnesses sworn be-
5 fore the grand jury during the sitting, which shall be filed of record
6 by the clerk.

Administra-
tion of oaths
to witnesses.
List of wit-
nesses.
1807, 140, § 10.
R. S. 136, § 9.
G. S. 171, § 9.
P. S. 213, § 9.

4 Gray, 1.

163 Mass. 455.

1 SECTION 10. The grand jury may appoint one of their number
2 as clerk, and he shall keep a record of their proceedings and, if the
3 jury so direct, shall deliver it to the attorney general or district
4 attorney.

Clerk and
record.
R. S. 136, § 10.
G. S. 171, § 10.
P. S. 213, § 10.

1 SECTION 11. If the grand jury are dismissed before the court is
2 adjourned without day, they may be summoned to attend again
3 in the same sitting, at such time as the court orders.

P. S. 213, § 11.

Re-summon-
ing at same
sitting.
R. S. 136, § 11.
G. S. 171, § 11.

1 SECTION 12. No grand juror or officer of the court shall disclose
2 the fact that an indictment has been found against any person who
3 is not in custody or under recognizance, otherwise than by issuing
4 or executing process on the indictment.

G. S. 171, § 12.

P. S. 213, § 12.

Disclosure of
indictment
found forbid-
den.
R. S. 136, § 12.

1 SECTION 13. No grand juror shall be allowed to state or testify
2 in any court in what manner he or any other member of the jury
3 voted on any question before the grand jury, or what opinion was
4 expressed by any juror relative to such question. In charging the
5 grand jury, the court shall remind them of the provisions of this
6 and the preceding sections.

— of proceed-
ings forbidden.
R. S. 136, § 13.
G. S. 171, § 13.
P. S. 213, § 13.

1 SECTION 14. No member of the grand jury which has found an
2 indictment shall serve upon the jury for the trial thereof.

R. S. 137, § 2.

G. S. 172, § 2.

P. S. 214, § 4.

Grand juror
not to be
traverse juror.

INDICTMENTS AND COMPLAINTS.

1 SECTION 15. Whoever is held in custody on a charge of crime
2 shall be discharged if he is not indicted before the end of the second
3 sitting of the court at which he is held to answer, unless the court
4 finds that the witnesses for the prosecution have been enticed or
5 kept away, or are detained and prevented from attending the court
6 by illness or accident, and except as provided in the following
7 section.

Discharge of
prisoner not
indicted.
1784, 72, § 13.
R. S. 136, § 14.
G. S. 171, § 14.
P. S. 213, § 14.

1 SECTION 16. If the grand jury does not indict a person who is
2 held in custody on a charge of crime by reason of his insanity, they
3 shall so certify to the court, which, if satisfied that he is insane,

Commitment
if not indicted
by reason of
insanity.
1862, 225, § 17.

P. S. 213, § 15. 1883, 148, § 2. 1889, 30, § 1. 1893, 390, § 4.	may order him to be committed to a state insane hospital, under such limitations as it may order; or, if the court finds that he has been a criminal or has been vicious in his life, it may order him to be committed to the asylum for insane criminals, and if he is charged with felony, his expenses there or in a state insane hospital or in any state charitable institution to which he may be transferred shall be paid by the commonwealth.	4 5 6 7 8 9 10
Contents of indictment. 1899, 409, §§ 6, 7, 12.	SECTION 17. An indictment shall contain:— First, The caption, which shall consist of the name of the commonwealth, county and court in which the indictment is presented, and the time of the sitting of the court. One caption will be sufficient, although the indictment contains more than one count. Second, A plain and concise description of the act which constitutes the crime, or the appropriate legal term descriptive of such act, without a detailed description thereof. The words used in a statute to define a crime, or other words conveying the same meaning, may be used.	1 2 3 4 5 6 7 8 9 10
Circumstances of the act. 1899, 409, § 13.	SECTION 18. The circumstances of the act may be stated according to their legal effect, without a full description thereof.	1 2
Name of defendant. 1899, 409, § 8.	SECTION 19. If the name of an accused person is unknown to the grand jury, he may be described by a fictitious name or by any other practicable description, with an allegation that his real name is unknown. An indictment of the defendant by a fictitious or erroneous name shall not be ground for abatement: but if at any subsequent stage of the proceedings his true name is discovered, it shall be entered on the record and may be used in the subsequent proceedings, with a reference to the fact that he was indicted by the name mentioned in the indictment.	1 2 3 4 5 6 7 8 9
Time and place. 1899, 409, § 10.	SECTION 20. The time and place of the commission of the crime need not be alleged unless it is an essential element of the crime. The allegation of time in the caption shall, unless otherwise stated, be considered as an allegation that the act was committed before the finding of the indictment, after it became a crime, and within the period of limitations. The name of the county and court in the caption shall, unless otherwise stated, be considered as an allegation that the act was committed within the territorial jurisdiction of the court. All allegations of the indictment shall, unless otherwise stated, be considered to refer to the same time and place.	1 2 3 4 5 6 7 8 9 10
Means. 1899, 409, § 14.	SECTION 21. The means by which a crime is committed need not be alleged in the indictment unless they are an essential element of the crime.	1 2 3
Description of written instrument. 1899, 409, § 15.	SECTION 22. If an allegation relative to a written instrument which consists wholly or in part of writing, print or figures is necessary, it may describe such instrument by any name or designation by which it is usually known, or by the purport thereof, without setting out a copy or facsimile of the whole or of any part thereof; and no variance between such recital or description and the instrument produced at the trial shall be material, if the identity	1 2 3 4 5 6 7

8 of the instrument is evident and the purport thereof is sufficiently
9 described to prevent prejudice to the defendant.

1 SECTION 23. If an allegation relative to any bullion, money,
2 notes, bank notes, checks, drafts, bills of exchange, obligations or
3 other securities for money of any country, state, county, city, town,
4 bank, corporation, partnership or person is necessary, it may de-
5 scribe it as money, without specifying any particulars thereof; and
6 such descriptive allegation shall be sustained by proof of any
7 amount of bullion, money, notes or other securities for money as
8 aforesaid, although the particular nature thereof shall not be proved.

Description
of money;
1834, 186, § 2.
R. S. 133, § 10.
1845, 215.
1846, 171, § 2.
G. S. 161, § 42.
1878, 186.
P. S. 203, § 44.
1899, 409, § 16.
100 Mass. 1.
118 Mass. 443.
173 Mass. 541.

1 SECTION 24. The value or price of property need not be stated,
2 unless it is an essential element of the crime. If the nature, degree
3 or punishment of a crime depends upon the fact that the property ex-
4 ceeds or does not exceed a certain value, it may be described, as the
5 case may be, of more than that value, or of not more than that value.

— of value or
price.
1899, 409, § 17.

1 SECTION 25. If an indictment for a crime which involves the
2 commission or attempted commission of an injury to property de-
3 scribes the property with sufficient certainty in other respects to
4 identify the act, it need not allege the name of the owner.

— of owner-
ship.
1899, 409, § 18.

1 SECTION 26. If one element of the criminality of an act is its
2 commission in a public place, and if such place is not more par-
3 ticularly defined in the statute, the act may be alleged generally to
4 have been committed "in a public place".

— of public
place.
1899, 409, § 19.

1 SECTION 27. In an indictment for the larceny of an animal, or
2 for any other crime in respect thereof, it may be described by the
3 name by which it is commonly known, without stating its age or
4 sex or whether it is alive or dead.

— of animal.
1899, 409, § 20.

1 SECTION 28. If it is necessary to set forth the judicial proceed-
2 ings in any case then or formerly pending in any court, civil or
3 military, or any proceedings before a justice of the peace or any
4 other magistrate, only the substance of said proceedings or such
5 part thereof as shall constitute in whole or in part the crime charged
6 need be alleged.

— of judicial
proceedings.
1899, 409, § 21.

1 SECTION 29. An allegation that the defendant committed the
2 act charged shall be a sufficient allegation that he was criminally
3 responsible therefor.

General intent.
1899, 409, § 9.

1 SECTION 30. If an intent to injure or defraud is an essential
2 element of a crime, an intent to injure or defraud may be alleged
3 generally, without naming the person, corporation or government
4 intended to be injured or defrauded. Proof of an intent to injure
5 or defraud any person or body corporate shall be competent to sup-
6 port the allegation.

Intent to injure
or defraud.
R. S. 127, § 14.
G. S. 162, § 13.
P. S. 204, § 13.
1899, 409, § 23.
12 Met. 446.
100 Mass. 12.

1 SECTION 31. Different means or different intents by or with
2 which a crime may be committed may be alleged in the same count
3 in the alternative.

Alternative
descriptions.
1899, 409, § 25.

Continuing
offences.
1899, 409, § 11.

SECTION 32. An allegation that a crime was committed or that certain acts were done during a certain period of time next before the finding of the indictment shall be a sufficient allegation that the crime alleged was committed or that the acts alleged were done on divers days and times within that period.

Unnecessary
and immate-
rial allega-
tions.
R. S. 137, § 14.
1838, 181, § 4.
1846, 62; 95,
§ 15.
1852, 37, § 3.
1858, 23.
G. S. 168, § 2;
171, § 16; 172,
§ 19.
1860, 191, § 10.
P. S. 210, § 2;
213, §§ 16, 17.
1885, 144.
1886, 53.
1899, 409, §§ 3,
6, 9.
150 Mass. 66.
156 Mass. 234.
175 Mass. 325.

SECTION 33. Presumptions and conclusions of law, matters of which judicial notice is taken and allegations which are not required to be proved need not be alleged. An indictment shall not be considered defective or insufficient because it omits to allege that the crime was committed, or the act was done "traitorously", "feloniously", "burglariously", "wilfully", "maliciously", "negligently", "unlawfully" or otherwise similarly to describe the crime, unless such description is an element of the crime charged, or because it omits to allege that the crime was committed or done with "force and arms", or "against the peace", or against the form of the statute or statutes, or against a by-law, ordinance, order, rule or regulation of any public authority, nor because it omits to state or misstates the title, occupation, estate or degree of the defendant or of any other person named in the indictment, or of the name of the county, city, town or place of his residence, unless such omission or misstatement tends to the prejudice of the defendant. An indictment shall not be considered defective or insufficient by reason of describing a fine or forfeiture as enuring to the use of the commonwealth instead of to the use of the county, city or town, nor by reason of any misstatement as to the appropriation of any fine or forfeiture, nor by reason of its failure to allege or recite a special statute or a by-law or ordinance of a city or town or order of the mayor and aldermen or selectmen or rules or regulations of any public board of officers.

Immaterial
defects.
1899, 409, § 5.

SECTION 34. An indictment shall not be quashed or be considered defective or insufficient if it is sufficient to enable the defendant to understand the charge and to prepare his defence; nor shall it be considered defective or insufficient for lack of any description or information which might be obtained by requiring a bill of particulars as provided in section thirty-nine.

Variance.
1864, 250, § 1.
P. S. 214, § 26.
1899, 409, § 4.
97 Mass. 570.
107 Mass. 205,
231.
133 Mass. 393.

SECTION 35. A defendant shall not be acquitted on the ground of variance between the allegations and proof if the essential elements of the crime are correctly stated, unless he is thereby prejudiced in his defence. He shall not be acquitted by reason of an immaterial misnomer of a third party, by reason of an immaterial mistake in the description of property or the ownership thereof, by reason of failure to prove unnecessary allegations in the description of the crime or by reason of any other immaterial mistake in the indictment.

Scope of word
"oath."
1899, 409, § 22.

SECTION 36. The word "oath" as used in an indictment shall include an "affirmation".

Exceptions
and provisos.
1899, 409, § 26.

SECTION 37. An excuse, exception or proviso which is not stated in the enacting clause of a statute creating a crime or which

3 is stated only by reference to other provisions of the statute need
 4 not be negatived in the indictment unless it is necessary for a com-
 5 plete definition of the crime. If any statute shall prescribe a form
 6 of indictment in which an excuse, exception or proviso is not
 7 negatived, it shall be taken that it is not necessary to a complete
 8 definition of the crime that they should be negatived. If a statute
 9 which creates a crime permits an act, which is therein declared
 10 to be criminal, to be performed without criminality under stated
 11 conditions, such conditions need not be negatived.

1 SECTION 38. The words used in an indictment may, except as
 2 otherwise provided in this section, be construed according to their
 3 usual acceptation in common language; but if certain words and
 4 phrases are defined by law, they shall be used according to their
 5 legal meaning.

Meaning of
 words and
 phrases.
 1899, 409, § 12.

6 The following words, when used in an indictment, shall be suffi-
 7 cient to convey the meaning herein attached to them:—

8 *Adultery.*—The sexual intercourse by a married man with a
 9 woman not his wife, by an unmarried man with a married woman,
 10 by a married woman with a man not her husband.

11 *Affray.*—The fighting together of two or more persons in a
 12 public place to the terror of the persons lawfully there.

13 *False Pretences.*—The false representations made by word or
 14 act which are of such a character, or which are made under such
 15 circumstances and in such a way, with the intention of influencing
 16 the action of another, as to be punishable.

17 *Forgery.*—The false making, altering, forging or counterfeiting
 18 of any instrument described in section one of chapter two hundred
 19 and nine, or any instrument which, if genuine, would be a founda-
 20 tion for or release of liability of the apparent maker.

21 *Fornication.*—The sexual intercourse between a man and an un-
 22 married woman.

23 *Murder.*—The killing of a human being, with malice afore-
 24 thought.

25 *Rape.*—The unlawful forcible carnal knowledge by a man of a
 26 woman against her will or without her consent; or the carnal
 27 knowledge by a man of a female child under the statutory age of
 28 consent.

29 *Robbery.*—The taking and carrying away of personal property
 30 of another from his person and against his will, by force and
 31 violence, or by assault and putting in fear, with intent to steal.

32 *Stealing.*—*Larceny.*—The criminal taking, obtaining or con-
 33 verting of personal property, with intent to defraud or deprive the
 34 owner permanently of the use of it; including all forms of larceny,
 35 criminal embezzlement and obtaining by criminal false pretences.

1 SECTION 39. The court may, upon the arraignment of the
 2 defendant, or at any later stage of the proceedings, order the pros-
 3 ecution to file a statement of such particulars as may be necessary
 4 to give the defendant and the court reasonable knowledge of the
 5 nature and grounds of the crime charged, and if it has final juris-
 6 diction of the crime, shall so order at the request of the defendant
 7 if the charge would not be otherwise fully, plainly, substantially
 8 and formally set out. If there is a material variance between the

Bill of particu-
 lars.
 1887, 436, § 2.
 1899, 409, §§ 10,
 13, 14, 16, 24, 27.

evidence and the bill of particulars, the court may order the bill of particulars to be amended, and may postpone the trial, which may be before the same or another jury, as the court may order. If, in order to prepare for his defence, the defendant desires information as to the time and place of the alleged crime or as to the means by which it is alleged to have been committed, or more specific information as to the exact nature of the property described as money, or, if indicted for larceny, as to the crime which he is alleged to have committed, he may apply for a bill of particulars as aforesaid.

Indictment for larceny.
1899, 409, § 24.

SECTION 40. In an indictment for criminal dealing with personal property with intent to steal, an allegation that the defendant stole said property shall be sufficient; and such indictment may be supported by proof that the defendant committed larceny of the property, or embezzled it, or obtained it by false pretences.

— for receiving stolen property.
1804, 143, § 11.
R. S. 126, § 24.
G. S. 161, § 45.
P. S. 203, § 50.

SECTION 41. In prosecutions for the crime of buying, receiving or aiding in the concealment of stolen property which is known to have been stolen, it shall not be necessary to allege or prove that the person who stole the property has been convicted. 3 Mass. 126.

— for perjury.
1860, 186, § 1.
P. S. 205, § 5.
5 Allen, 499.
105 Mass. 582.
107 Mass. 227.
119 Mass. 317.
152 Mass. 577.
164 Mass. 398.
166 Mass. 175.

SECTION 42. In an indictment for perjury alleged to have been committed in a criminal case an allegation of the substance of the crime shall be sufficient: if it is alleged to have been committed in a civil case, an allegation of the nature of the controversy in general terms shall be sufficient. In both cases, the court or magistrate before whom the oath or affirmation was taken shall be alleged, but no part of the proceeding in which, or the commission or authority of the court or person before whom, the perjury was committed need be alleged.

— for subornation of perjury.
1860, 186, § 2.
P. S. 205, § 6.
152 Mass. 498.
155 Mass. 224.

SECTION 43. If, in an indictment for subornation of perjury or for attempting to incite or procure another person to commit perjury, it is alleged that perjury has been committed, an allegation of the perjury as provided in the preceding section and an allegation that the defendant wilfully incited or procured said person to commit said perjury shall be sufficient. If it is not alleged that such perjury has been committed, an allegation of the substance of the crime with which the defendant is charged shall be sufficient, without allegations as to matters or things which by the provisions of the preceding section are declared to be unnecessary.

— for unnatural and lascivious acts.
1887, 436, § 2.
160 Mass. 536.

SECTION 44. In an indictment under the provisions of section twenty-seven of chapter two hundred and twelve, an allegation that the defendant committed an unnatural and lascivious act with the person named or referred to in the indictment shall be sufficient.

Different counts for different offences in same indictment.
1861, 181.
P. S. 213, § 18.
132 Mass. 263.

SECTION 45. Two or more counts describing different crimes which depend upon the same facts or transactions may be set forth in the same indictment if it contains an averment that the different counts therein are different descriptions of the same acts.

134 Mass. 201.

150 Mass. 394.

152 Mass. 276, 283.

159 Mass. 56.

VENUE OF SPECIFIC CRIMES.

1 SECTION 46. A crime committed on or within one hundred rods
 2 of the boundary line of two counties may be alleged to have been
 3 committed, and may be prosecuted and punished, in either county;
 4 and if committed on or within fifty rods of the boundary line of
 5 two judicial districts, it may be alleged to have been committed, and
 6 may be prosecuted and punished, in either district. A crime com-
 7 mitted upon the sea within one league of the shore may be pros-
 8 ecuted and punished in an adjacent county.

Crime near
 boundary line.
 1794, 31, § 1.
 R. S. 133, § 7.
 G. S. 171, § 17.
 1874, 271, § 5.
 P. S. 154, § 50;
 213, § 19.
 1885, 322.
 1893, 306, § 34.
 1894, 431.
 2 Allen, 502.
 167 Mass. 173.

1 SECTION 47. Larceny, whether at common law or as defined by
 2 section twenty-six of chapter two hundred and eight, may be prose-
 3 cuted and punished in any county in which the defendant had pos-
 4 session of the property which is alleged to have been stolen.

Venue of
 larceny.
 1878, 105.
 P. S. 213, § 20.

1 SECTION 48. The crime of obtaining money or a personal
 2 chattel by a false pretence, and the crime described in section
 3 twenty-eight of chapter two hundred and eight, may be alleged to
 4 have been committed, and may be prosecuted and punished, in any
 5 county in which the false pretence was made, written or used, or
 6 in or through which any of the property obtained was carried,
 7 sent, transported or received by the defendant.

— of indict-
 ment for ob-
 taining money
 by false pre-
 tences.
 1863, 248, § 1.
 P. S. 213, § 21.

1 SECTION 49. If a mortal wound is given, or if other violence or
 2 injury is inflicted, or if poison is administered, in one county, by
 3 means whereof death ensues in another county, the homicide may
 4 be prosecuted and punished in either county.

— of indict-
 ment if injury
 is in one county
 and death in
 another.
 1795, 45, § 1.

G. S. 171, § 18.

P. S. 213, § 22.

2 Pick. 549.

R. S. 133, § 8.
 118 Mass. 25.

1 SECTION 50. If a mortal wound is given, or if other violence
 2 or injury is inflicted, or if poison is administered, on the high
 3 seas or on land either within or without this commonwealth, by
 4 means whereof death ensues in any county thereof, the homicide
 5 may be prosecuted and punished in the county in which the death
 6 happens.

— of indict-
 ment for crime
 committed at
 sea, etc.
 1795, 45, § 2.
 R. S. 133, § 2.
 G. S. 171, § 19.
 P. S. 213, § 23.
 101 Mass. 1.

1 SECTION 51. If a mortal wound is given, or if other violence or
 2 injury is inflicted, or if poison is administered, in any county of
 3 this commonwealth, by means whereof death ensues without this
 4 commonwealth, the homicide may be prosecuted and punished in
 5 the county in which the act was committed.

— of indict-
 ment if injury
 is in this com-
 monwealth and
 death outside.
 P. S. 213, § 24.

LIMITATION OF CRIMINAL PROSECUTIONS.

1 SECTION 52. An indictment for murder may be found at any
 2 time after the death of the person who is alleged to have been mur-
 3 dered. An indictment for any other crime shall be found and filed
 4 within six years after the crime has been committed; but any
 5 period during which the defendant is not usually and publicly resi-
 6 dent within this commonwealth shall be excluded in determining
 7 the time limited.

— of criminal
 prosecutions.
 R. S. 136, § 16.
 G. S. 171, § 20.
 P. S. 213, § 25.

Venue of new indictment against corporation after abatement of former one, etc.
1867, 164.
P. S. 213, § 26.

SECTION 53. If an indictment, duly found and returned within the time limited by law against a corporation to recover a pecuniary penalty, is abated or otherwise avoided or defeated by reason of any matter of form, or if after a verdict against such corporation, judgment is arrested, or if a judgment against such corporation is reversed on writ of error, a new indictment for the same cause may be found and filed within one year after the abatement of the former indictment or the reversal of the judgment as aforesaid.

ARREST, ARRAIGNMENT AND OTHER PROCEEDINGS.

Prisoner to be served with copy of indictment, etc.
1892, 130, § 6.
R. S. 136, §§ 18, 19.
G. S. 171, § 22.
1869, 433, 1.
1878, 151, 2.
P. S. 213, § 28.
1891, 379, § 11.

SECTION 54. After the finding of an indictment for murder, the defendant, if in custody, shall forthwith be served by the sheriff or his deputy with a copy thereof and with an order of the court notifying him that the indictment will be entered forthwith upon the docket of the superior court for the county in which it has been found or, if found in the county of Dukes County or Nantucket, that it will be entered forthwith upon the docket of the superior court for the county of Bristol.

— to have list of jurors and process for witnesses.
R. S. 136, § 23.
G. S. 171, § 24.
P. S. 213, § 31.
13 Mass. 501.
104 Mass. 538.

SECTION 55. A prisoner who is indicted for a crime which is punishable with death or imprisonment for life, upon demand by him or his counsel upon the clerk, shall have a list of the jurors who have been returned and process to summon witnesses who are necessary to his defence, at the expense of the commonwealth.

Other prisoners entitled to copy of indictment.
R. S. 136, § 24.
G. S. 171, § 25.
P. S. 213, § 32.

SECTION 56. Whoever, having been indicted for felony, is under recognizance or in custody to answer therefor shall be entitled to a copy of the indictment and of all indorsements thereon without charge.

Prosecuting officers may issue subpoenas.
R. S. 136, § 25.
G. S. 171, § 26.
P. S. 213, § 33.

SECTION 57. The attorney general and district attorneys may issue subpoenas under their hands for witnesses to appear and testify on behalf of the commonwealth, and such subpoenas shall have the same force, and be obeyed in the same manner, and under the same penalties, in case of default, as if issued by the clerk of the court.

Witnesses for commonwealth to attend without fees.
R. S. 136, § 26.
1859, 62.
G. S. 171, § 27.
P. S. 213, § 34.

SECTION 58. Witnesses who are summoned in behalf of the commonwealth shall attend without the payment of fees, and shall be punishable for non-attendance; but if the court finds that they are unable to defray their expenses, it shall order their fees which have accrued to be paid, and may make such further order for the payment of their fees as may be considered reasonable. The court may at each sitting pass a general order for the payment of the fees of such witnesses.

Witness to recognize, when.
1868, 69.
1872, 214.
P. S. 213, § 35.

SECTION 59. A justice of a court of record may at any time order a witness for the commonwealth in a criminal case pending in such court to recognize, with or without sureties, to appear and testify at the next or any succeeding sitting of said court, and may issue a warrant to bring such witness before him to recognize as aforesaid; but no witness who is unable to procure sureties shall on that account be committed to jail except in cases of felony.

1 SECTION 60. If, upon the arraignment of the defendant, he re-
 2 fuses to plead or does not confess the indictment to be true, the
 3 court shall order a plea of not guilty to be entered, and shall
 4 thereupon proceed as if he had pleaded not guilty. It shall not be
 5 necessary in any case to ask a prisoner how he will be tried.

Arraignment.
 Standing mute.
 1795, 45, § 3.
 R. S. 136, §§ 28,
 29.
 G. S. 171, § 29.
 P. S. 213, § 37.
 13 Allen, 568.
 125 Mass. 397.

1 SECTION 61. Whoever is held in custody upon an indictment
 2 shall, if he requires it, either be tried at the sitting of the court
 3 next after the expiration of six months from the time when he was
 4 imprisoned or be bailed upon his own recognizance, unless the court
 5 finds that the witnesses on behalf of the government have been en-
 6 ticed or kept away or have been detained and prevented from attend-
 7 ing the court by illness or inevitable accident.

Limit of time
 of trial.
 1784, 72, § 13.
 R. S. 136, § 30.
 G. S. 171, § 30.
 P. S. 213, § 38.
 109 Mass. 340.

1 SECTION 62. The court may refuse to receive a plea in abate-
 2 ment or other dilatory plea to an indictment until its truth has been
 3 proved by affidavit or other evidence.

P. S. 213, § 39.
 Verification
 of plea in
 abatement.
 R. S. 136, § 31.
 G. S. 171, § 31.

1 SECTION 63. In a plea of autrefois acquit or autrefois convict,
 2 an allegation that, at a certain sitting of a certain court, which
 3 shall be set forth, the defendant was lawfully acquitted or con-
 4 victed, as the case may be, of the same crime with which he is
 5 again charged shall be sufficient.

Form of plea
 of former
 acquittal, etc.
 1864, 250, § 4.
 P. S. 213, § 40.
 8 Allen, 545.
 113 Mass. 200.

1 SECTION 64. If an issue of fact is joined upon an indictment,
 2 the court may, upon application of the defendant, grant a commis-
 3 sion to examine any material witnesses residing out of this common-
 4 wealth, in the same manner as in civil causes; and the prosecuting
 5 officer may join in such commission, and may name any material
 6 witnesses to be examined on the part of the commonwealth.

Commission to
 examine wit-
 nesses.
 R. S. 136, § 32.
 G. S. 171, § 32.
 P. S. 213, § 41.
 5 Met. 425.

1 SECTION 65. When such commission is issued, the interroga-
 2 tories to be annexed thereto shall be settled and the commission
 3 executed and returned as is provided in relation to commissions in
 4 civil cases, and the depositions taken thereon and returned shall be
 5 read in the same cases, with the like effect, and subject to the same
 6 exceptions, as in civil cases; but if the defendant on his trial de-
 7 clines to use the deposition so taken, the prosecuting officer shall
 8 not, without the defendant's consent, make use of any deposition
 9 taken on behalf of the commonwealth.

— how exe-
 cuted; deposi-
 tion, how used.
 R. S. 136, § 33.
 G. S. 171, § 33.
 P. S. 213, § 42.

1 SECTION 66. No proceedings against a person for a crime shall
 2 bar a civil action which might otherwise be maintained by a person
 3 who is aggrieved by the commission of the crime.

Civil remedies
 not barred by
 criminal pro-
 ceedings.
 1851, 151, § 6.

1856, 123, § 6.

G. S. 171, § 34.

P. S. 213, § 43.

1 SECTION 67. The provisions of this chapter, and the forms
 2 hereto annexed, shall apply as well to complaints as to indictments,
 3 and such forms shall be sufficient in cases to which they are appli-
 4 cable. In other cases, forms as nearly like the forms hereto annexed
 5 as the nature of the cases and the provisions of law will allow may
 6 be used; but any other form of indictment or complaint which is
 7 authorized by law may be used.

Effect of an-
 nexed forms.
 1899, 409, §§ 1,
 2, 25.

Forms of
pleadings.

SCHEDULE OF FORMS OF PLEADINGS.

CAPTION AND COMMENCEMENT OF INDICTMENT.

COMMONWEALTH OF MASSACHUSETTS.

(Suffolk,) to wit:

Caption and
commence-
ment of in-
dictment.

At the Superior Court holden at (Boston,) within and for the county of
(Suffolk,) for the transaction of criminal business, on the day of
in the year of our Lord one thousand, etc.

The jurors for the said Commonwealth on their oath present

CAPTION AND COMMENCEMENT OF COMPLAINT.

(To a Police, District or Municipal Court.)

COMMONWEALTH OF MASSACHUSETTS.

(Suffolk,) to wit:

Caption and
commence-
ment of com-
plaint.

To the court of holden at for the transaction of criminal
business, within the county of , A. B. of in behalf of the Common-
wealth of Massachusetts on the day of in the year, etc., on oath
complains that

(To a Trial Justice.)

To A. B., a Trial Justice in and for the county of and Commonwealth
of Massachusetts, C. D. of etc. (as in form above).

(To a Justice of the Peace commissioned to Issue Warrants.)

To A. B., Justice of the Peace in and for the county of and Common-
wealth of Massachusetts, designated and commissioned to issue warrants in crim-
inal cases, C. D. of etc. (as in form above).

(If the statute requires a particular person to make complaint, this should be
alleged.)

Abduction.
R. L. 212, §§ 1, 2.

Abduction. — That A. B. did fraudulently and deceitfully entice (and take
away) one C. D., an unmarried female under the age of sixteen years, from the
house of her father (or guardian, etc., as the case may be), without the consent
of the said father (or guardian, etc., as the case may be), under whose care and
custody said C. D. was living, for the purpose of effecting a clandestine mar-
riage of said C. D. without the consent of her said father (or guardian, etc.,
as the case may be).

That A. B. did fraudulently and deceitfully entice (and take away) C. D., an
unmarried woman of a chaste life from her father's house (or if elsewhere, state
it, as the case may be), for the purpose of prostitution (or for the purpose of
unlawful sexual intercourse with her) at a house of ill fame (or assignation or
elsewhere, as the case may be).

Abortion.
R. L. 212, § 15.

Abortion. — (1) That A. B., with intent to procure the miscarriage of C. D.,
did unlawfully administer to her (or advise, or prescribe for her, or cause to be
taken by her), a certain drug (medicine or other noxious thing, as the case
may be).

If the woman dies, add "and in consequence thereof, said C. D. died."

(2) That A. B., with intent to procure the miscarriage of C. D., did unlaw-
fully use a certain instrument upon the body of said C. D., and in consequence
thereof said C. D. died.

(3) That A. B., with intent to procure the miscarriage of C. D., did unlaw-
fully do certain things (naming them) to (or upon the body of) said C. D.

(Charge principal felony and proceed.)

Accessory
before the fact.
R. L. 215, § 2.

Accessory before the fact. — That A. B., before the said felony was committed,
did incite, procure, aid, counsel, hire or command the said (principal) the said
felony to do and commit.

(Charge principal felony and proceed.)

Accessory
after the fact.
R. L. 215, § 4.

Accessory after the fact. — That A. B. afterwards, well knowing the said
C. D. to have committed the felony aforesaid, did harbor, (conceal, maintain,) or
assist said C. D., with intent that said C. D. should avoid or escape (deten-
tion, arrest,) trial, or punishment; the said A. B. not standing in the relation
of husband or wife, parent or grandparent, child or grandchild, brother or
sister, by consanguinity, affinity or adoption to the said C. D.

Adultery. — (1) That A. B. and C. D., a married woman, they not being married to each other, did commit adultery with each other. Adultery.
R. L. 212, § 10.

(2) That A. B., a married man, did commit adultery with C. D., they not being married to each other.

Affray. — That A. B. and C. D. did make an affray. Affray.

Armed with dangerous weapon when arrested. — (1) That A. B., while being lawfully arrested on a sufficient warrant on a criminal charge, was armed with a dangerous weapon, to wit, a slung-shot (or other dangerous weapon as the case may be). Armed with dangerous weapon when arrested.
R. L. 211, § 9.

(2) That A. B., while committing the crime of murder, was lawfully arrested by C. D., sheriff of said county, and when so arrested was armed with, and had on his person, a certain dangerous weapon (a slung-shot, etc., as the case may be).

Arson. — That A. B. wilfully and maliciously did burn the dwelling house of C. D. in in said county. Arson.
R. L. 208, §§ 1, 2, 4.

That A. B. wilfully and maliciously did burn a building adjoining the dwelling house of C. D. in in said county.

That A. B. wilfully and maliciously did set fire to a building in by the burning whereof the dwelling house of C. D. was burned.

That A. B. wilfully and maliciously, in the night time, did burn —

(1) A meeting house (church, town house, etc.) in in said county, erected for public use.

(2) A banking house (warehouse, etc.) of C. D. in in said county, of the value, with the property therein, of one thousand dollars and not the property of (the defendant).

(3) A barn (stable, shop or office) of C. D., in in said county, the same being there within the curtilage of the dwelling house of said C. D.

That A. B. wilfully and maliciously did burn a building, by the burning whereof (1), (2), or (3) was burned in the night time.

That A. B. wilfully and maliciously did burn a banking house (or other structure mentioned in the statute, as the case may be), in in said county of C. D.

Assault and battery. — That A. B. did assault and beat C. D. Assault and battery.

Assault to maim, etc. — That A. B. did assault C. D., with the malicious intent to maim (or disfigure) said C. D. by cutting out his tongue (or other facts required by the nature of the case). Assault to maim, etc.
R. L. 207, § 15.

Assault to murder. — That A. B. did assault C. D., with intent to murder him. Assault to murder.

R. L. 207, § 15.

Assault to rape. — That A. B. did assault C. D., with intent to commit rape upon her. Assault to rape.
R. L. 207, § 24.

That A. B. did assault C. D., a female child under the age of sixteen years, with intent unlawfully and carnally to know and abuse her.

Assault to rob. — That A. B., being armed with a dangerous weapon, did assault C. D., with intent to rob him (or to murder him). Assault to rob.
R. L. 207, § 18.

Assault upon an officer. — That A. B. did assault and beat C. D., who was a police officer of the (city of Boston) (or whatever the fact may be), and who was also in the lawful discharge of his duties as such officer, as said (defendant) well knew, [(and knowingly resisted and obstructed him in the discharge of his lawful duties.) This clause may be added if facts require]. Assault upon an officer.

Assuming to be an officer. — That A. B. did falsely assume and pretend to one C. D. that he, said A. B., was a police officer of (the city of Boston) (or a constable of the city of Boston), and did take upon himself to act as such officer, and did (state what he did if desired). Assuming to be an officer.
R. L. 210, § 33.

Attempt to break and enter. — That A. B. did attempt to break and enter a certain building in said (Boston) of one C. D., in the (night) time with intent therein to commit larceny, and in such attempt did (set out the overt act relied on): but did fail in the perpetration of said attempted offence (or was intercepted and prevented in the execution of said attempted offence). Attempt to break and enter.

Attempt to commit crime. — That A. B. did attempt to commit larceny of the property of (another), (or such other crime as may be intended to be charged), and in such attempt did (set out the overt act relied on), but did fail in the perpetration of said attempted offence (or was intercepted and prevented in the execution of said attempted offence). Attempt to commit crime.
R. L. 215, § 6.
177 Mass. 267.

Attempt to steal from person. — That A. B. did attempt to steal from the person of C. D., and in such attempt did put his hand against the person and into the pocket of the said C. D., but did fail in the perpetration of said attempted Attempt to steal from person.
R. L. 215, § 6.

offence (or was intercepted and prevented in the execution of the said attempted offence).

Breaking,
entering, etc.
R. L. 208, §§ 16-
19.

Breaking, entering, etc. — That A. B. did break and enter in the night time the building (ship or vessel) of one X., situated in said (Boston), with intent therein to commit murder (rape, robbery, etc.).

That A. B. did break and enter (or entered in the night time without breaking) a building (ship or vessel) of one X., in said (Boston), with intent (as above), the said X. (or other person) who was lawfully therein, being put in fear.

That A. B. did break and enter (or entering in the night time without breaking) a railroad car situated in said (Boston), of the (name of the railroad), with intent therein to commit larceny.

(1) That A. B. did enter in the night time the dwelling house of one X., in said (Boston), with intent therein to commit larceny (murder, etc., as the case may be).

(2) That A. B. did break and enter a building (ship or vessel) of one X., in said (Boston), with intent therein, etc. (as above).

Breaking
glass.
R. L. 208, § 100.

Breaking glass. — That A. B. did wantonly (or maliciously) break certain panes of glass in and part of a certain building, the property of C. D. in said (Boston).

Burglarious
implements.
R. L. 208, § 41.

Burglarious implements. — That A. B. knowingly did have in his possession certain machines, tools and implements adapted and designed for cutting through, forcing and breaking open buildings, rooms, vaults, safes (and other depositories), in order to steal therefrom such money and other property as might be found therein, said A. B. knowing said machines, tools, and implements to be adapted and designed for the purpose aforesaid, and intending to use and employ them therefor.

Burglary, etc.
R. L. 208, §§ 14,
15.

Burglary, etc. — That A. B. in the night time did break and enter the dwelling house of C. D., situated in said (Boston), with intent therein to commit larceny (murder, rape, or robbery, as the case may be).

(If desired add actual larceny in the building.)

Or,

That A. B. did enter the dwelling house of one X., situated in said (Boston), with intent therein to commit larceny, and after having so entered with said intent, did break said dwelling house in the night time, X. being lawfully therein, and said A. B. being armed with a dangerous weapon, at the time of such entry: (or such breaking): (or arming himself with a dangerous weapon in said house): (or did make an assault on said X., who was lawfully therein).

That A. B. did break and enter the dwelling house of one X., in said (Boston), in the night time with intent therein to commit larceny (murder, etc., as the case may be).

Burning to
defraud insur-
ance company.
R. L. 208, § 10.
177 Mass. 267.

Burning to defraud insurance company. — That A. B. did burn a certain building in in said county, or certain (goods, wares, and merchandise or other chattels — name the property) which was (or were) at the time of such burning insured in the Insurance Company, a corporation duly established by law, against loss (or damage) by fire, with the intent thereby to injure the said insurer.

Common
drunkard.

Common drunkard. — That A. B., during the three months next before the making of this complaint, was a common drunkard. R. L. 212, § 46.

Common
night walker.
R. L. 212, § 46.

Common night walker. — That A. B., during the three months next before the making of this complaint was a common night walker, habitually walking in the streets in the night time for the purpose of prostitution.

Concealing
mortgaged
personal
property.
R. L. 208, § 68.

Concealing mortgaged personal property. — That A. B. did mortgage to X. in due form of law certain personal property (setting out the mortgaged property), and that afterward, the said mortgage being in full force and effect, and the said X. remaining the owner thereof (if such be the fact), said A. B. did remove and conceal the said property with fraudulent intent to place the same beyond the control of the said X.

Conspiracy.

Conspiracy. — (1) That A. B. and C. D. conspired together to murder one E. F.

(2) That A. B. and C. D. conspired together to commit rape upon E. F.

(3) That A. B. and C. D. conspired together to steal the property, money, etc., of E. F.

Cruelty to
animals.
R. L. 212, § 70.

Cruelty to animals. — (1) That A. B. did overdrive (overload) (drive when overloaded) (overwork) (torture) (torment) (deprive of necessary sustenance) (cruelly beat) (cruelly mutilate) (cruelly kill) a certain horse.

(2) That A. B. did cause and procure one C. D. to overdrive, etc., a certain horse.

(3) That A. B. having the charge and custody of a certain horse did inflict unnecessary cruelty upon it.

(4) That A. B. having the charge and custody of a certain horse did unnecessarily fail to provide it with proper food, drink, shelter and protection from the weather.

Disorderly house. — That A. B., during the three months next before the finding of this indictment, at said (Boston) did keep and maintain a certain and common, noisy, ill-governed and disorderly house, resorted to for the purpose of drinking, quarreling, making great noises, and breaking and disturbing the peace, to the common nuisance of all the people. Disorderly house.
R. L. 161, § 41.

That A. B., during the three months next before the finding of this indictment, did keep at said (Boston), a certain house of ill fame, resorted to for the purposes of prostitution and lewdness. R. L. 212, § 19.

Drunkenness. — That A. B. was, by the voluntary use of intoxicating liquor, drunk. Drunkenness.
R. L. 212, § 39.

Escape. — That A. B., being lawfully imprisoned in the House of Correction, in said county, did break therefrom and escape. Escape.
R. L. 210, § 17.

Escape from state prison. — That A. B. was a convict in the State Prison in said county, under sentence for a limited time, to wit, for (not less than nor more than years), and, while a convict as aforesaid, did escape from said prison. Escape from state prison.
R. L. 210, § 15.

Exposure of person. — That A. B., in a public place in said (Boston), wherein were great numbers of people, indecently did expose to the view of the said people his body and person naked and uncovered. Exposure of person.

Forged indorsement. — That A. B. did forge a certain indorsement in and upon the back of, and as a part of, a certain promissory note, with intent to injure and defraud. Forged indorsement.

(The purport or substance of the note and indorsement may be set forth.)

Forgery. — That A. B., with intent to injure and defraud, did forge a certain instrument purporting to be, etc. (give the name of the instrument, description, tenor or substance as the pleader chooses). Forgery.
R. L. 209, § 1.

Fornication. — That A. B. did commit fornication with C. D., a single woman.

Gaming. — That A. B., during the three months next before the finding of this indictment, at said (Boston), did keep and maintain a certain common nuisance, to wit, a tenement resorted to and used for illegal gaming. Fornication.
R. L. 212, § 14.
Gaming.
R. L. 101, § 7.

House of ill fame. — That A. B., during the three months next before the finding of this indictment, at said (Boston), did keep and maintain a certain tenement resorted to for purposes of prostitution and lewdness, to the common nuisance of all the people. House of ill fame.
R. L. 101, § 6.

Idle and disorderly person. — That A. B., during the three months next before the making of this complaint, was an idle and disorderly person, and neglected all lawful business and habitually misspent his time by frequenting houses of ill fame, gaming houses, and tipling shops. Idle and disorderly person.
R. L. 212, § 46.

Incest. — That A. B., being the father of C. D., a single woman (or state such relationship as will show the parties to be within the degree of consanguinity within which marriages are prohibited or declared by law to be incestuous and void), did have carnal knowledge of the body of said C. D. Incest.
R. L. 212, § 13.

(A. B. being married to another woman than said C. D., if such be the fact, and it be desired to cover adultery.)

Larceny. — (1) That A. B. did steal one horse of the value of more (or less, as the case may be) than one hundred dollars, of the property of C. D. Larceny.
R. L. 208, § 26.

Or,

(2) That A. B. did steal six cows, each of the value of twenty dollars, of the property of C. D.

Larceny from a conveyance. — That A. B. did steal from a certain conveyance, to wit, the wagon of one C. D. one book of the value, etc., of the property of C. D., the said C. D. being a common carrier (or a person carrying on the express business), and said conveyance being used by the said C. D. in said business. Larceny from a conveyance.
R. L. 208, § 26.

Larceny from realty. — That A. B., by a trespass, with intent to steal, did take and carry away from the realty, to wit, from the building of C. D., in said (Boston), ten pounds of lead pipe, each of the value of, etc., of the property of C. D., against his will, the said lead pipe being annexed to and a part of said building. Larceny from realty.
R. L. 208, § 35.

Larceny in building.
R. L. 208, § 20.

Larceny in building.—That A. B. did steal (one coat of the value of more than or less than), of the property of X., in a certain building (ship or vessel) of the said X., situated in said (Boston).

Larceny of beast or bird.
R. L. 208, § 37.

Larceny of beast or bird.—That A. B. did steal a certain bird , of the property of C. D., which bird was ordinarily kept in confinement.

Lewd and lascivious cohabitation.
R. L. 212, § 12.

Lewd and lascivious cohabitation.—That A. B. and C. D., not being married to each other, did during one month next before the finding of this indictment, (or such time as the evidence requires), lewdly and lasciviously associate and cohabit together.

Lewdness.
R. L. 212, § 46.

Lewdness.—That A. B., during the three months next before the finding of this indictment, was a lewd, wanton and lascivious person in speech and behavior.

Liquor, exposing and keeping.
Liquor.—Sale.
R. L. 101, § 6.

Liquor.—That A. B. did expose and keep for sale intoxicating liquors with intent unlawfully to sell the same. R. L. 100, § 1.

Liquor.—Sale.—That A. B. unlawfully did sell intoxicating liquors to C. D. That A. B., during the three months next before the finding of this indictment, without legal authority, did keep and maintain a certain tenement in said (Boston), by him used for the illegal sale and illegal keeping for sale of intoxicating liquor, to the common nuisance of all the people.

Lord's day.
R. L. 98, § 2.

Lord's day.—That A. B., on the day of , in the year of our Lord one thousand, etc., that day being the Lord's Day, did keep open his shop in said (Boston), for the purpose of doing business therein.

Did labor (business, or work), the same not being a work of necessity or charity.

Lottery.
R. L. 214, § 1.

Lottery.—(1) That A. B. did set up and promote a lottery for money.

(2) That A. B. was concerned in the setting up (managing, or drawing) of a certain lottery for money.

(3) That A. B. did dispose of a certain horse of the value of ten dollars to C. D., by way of a lottery.

That A. B., under the pretext of the sale of certain property, to wit: (state the property) to C. D., did dispose of to said C. D. certain other personal property, to wit: (state the property) with intent of said A. B., to make the said disposal of said (property) dependent upon a chance by lot, and that such chance was made an additional inducement to the disposal and sale of said (property).

Maiming, etc.
R. L. 207, § 14.

Maiming, etc.—That A. B. did assault C. D., and with malicious intent to maim and disfigure said C. D., did cut out his tongue.

Malicious injury.
R. L. 208, § 116.

Malicious injury.—That A. B. did wilfully and maliciously injure (or destroy) certain personal property (name it and allege value) of C. D.

Malicious injury to real property.

Malicious injury to real property.—That A. B. did wilfully (or maliciously) destroy (deface, or mar) a certain building of C. D. in said (Boston).

R. L. 208, § 88.

Manslaughter.
R. L. 207, § 13.

Manslaughter.—That A. B. did assault and beat C. D., and by such assault and beating did kill C. D.

Manslaughter by negligence.

Manslaughter by negligence.—That A. B., being under the legal duty, and being of sufficient ability to provide C. D., who was his wife, with sufficient food and drink for her sustenance and maintenance did neglect and refuse so to do; by reason whereof said C. D., being unable to provide sufficient food and drink for herself, became and was mortally sick and died.

Murder.
R. L. 207, § 1.

Murder.—That A. B. did assault and beat C. D., with intent to murder him (by striking him over the head with an axe), and by such assault and beating, did (kill and) murder C. D. (and the jurors further say that the defendant is guilty of murder in the second degree and not in the first degree). This may be added if murder in the first degree is not alleged.

Neglect of wife or minor child.
R. L. 212, §§ 45, 46.

Neglect of wife or minor child.—That A. B., during the three months next before the making of this complaint, being of sufficient ability, did unreasonably neglect to provide for the support of C. D., his lawful wife.

Obtaining signature by false pretences.
R. L. 208, § 27.

Obtaining signature by false pretences.—That A. B. designedly and with intent to defraud did falsely pretend to C. D., that, etc., etc., and by means of said false pretences, which said C. D. believed and relied upon, did obtain the signature of said C. D. to a certain written instrument, the false making whereof would be punishable as forgery, to wit, a certain promissory note (describe as in forgery); that the pretences so made to C. D. were false and were known to be false by the said A. B. at the time when he so made them.

Open and gross lewdness.
R. L. 212, § 12.

Open and gross lewdness.—That A. B. was guilty of open and gross lewdness and lascivious behavior in the presence of C. D.

Perjury. — That in a proceeding in the course of justice before the (set forth the tribunal), on an issue within the jurisdiction of said court duly joined, and tried before a jury of the county between X. as plaintiff and Y. as defendant, A. B. was lawfully sworn as a witness.

Perjury.
R. L. 210, § 1.

Whereupon it became and was material to said issue whether (say what) and to this the said A. B. did wilfully and corruptly testify and say in substance and effect that (say what); all his said testimony as above set forth being false, as he well knew.

Polygamy. — (1) That A. B. unlawfully married C. D., the said A. B. having at the time he so unlawfully married a lawful wife living other than said C. D.

Polygamy.
R. L. 212, § 11.

(2) That A. B., having a lawful wife living, to wit: X., did at (state place) unlawfully marry and have for his wife one C. D., after which the said A. B. did, while said X. was still living, on, at, etc., unlawfully cohabit and continue to cohabit in (Boston) with the said C. D.

Rape. — (1) That A. B. did assault C. D., with the intent to commit rape upon her; and her, the said C. D., did commit rape upon.

Rape.
R. L. 207, § 22.

(2) That A. B., in and upon C. D., a female child under the age of sixteen years, did make an assault with the intent her, the said C. D., unlawfully and carnally to know and abuse; and her, the said C. D., did unlawfully and carnally know and abuse.

Receiving stolen property. — That A. B., one watch of the value of dollars, the property of one C. D., then lately before stolen, did buy, receive, and aid in the concealment of, the said A. B. well knowing the said property to have been stolen as aforesaid.

Receiving stolen property.
R. L. 208, § 51.

Rescue. — That A. B., did forcibly rescue and take out of the lawful custody of E. F. one C. D., the said C. D. being a prisoner arrested by and held in the lawful custody of E. F., upon the charge of the crime of (larceny), the said E. F. being a police officer of (said city), duly authorized to arrest and hold in custody the said C. D. upon the charge aforesaid.

Rescue.
R. L. 210, § 14.

Robbery. — That A. B. did assault C. D. with intent to rob him, and thereby did rob and steal from the person of said C. D. (mention the property) of the property of said C. D.

Robbery.
R. L. 207, § 19.

Sodomy, etc. — That A. B. did commit the abominable and detestable crime against nature with a (state the person or beast).

Sodomy, etc.
R. L. 212, § 25.

Stubborn child. — That A. B., a minor, during the three months next before the making of this complaint, was a stubborn child, and stubbornly refused to submit to the lawful and reasonable commands of C. D., whose commands said A. B. was bound to obey.

Stubborn child.
R. L. 212, § 46.

Threats to extort. — That A. B. did verbally (or by a written or printed communication), maliciously threaten one C. D., to accuse him of a crime (name it), with the intent thereby to extort money from the said C. D.

Threats to extort.
R. L. 207, § 25.

Unlawful appropriation. — That A. B. did wilfully, mischievously, and without right take, drive and use a certain horse, the property of one C. D., without the consent of the said owner of said horse, or any person having the legal custody, care or control of the same.

Unlawful appropriation.
R. L. 208, § 54.

Unnatural act. — That A. B. did commit an unnatural and lascivious act with one C. D.

Unnatural act.
R. L. 212, § 27.

Uttering. — That A. B., with intent to injure and defraud, did utter and publish as true a certain forged instrument (describe as in forgery), well knowing the same to be forged.

Uttering.
R. L. 209, § 3.

Vagabond. — That A. B., for three months next before the making of this complaint, was a vagabond, and wandered about from place to place, neglecting all lawful calling and employment, and not having any home or means of support.

Vagabond.
R. L. 212, §§ 46, 61.

Vagrant. — That A. B., during the three months next before the making of this complaint, was an idle person who, not having visible means of support, lived without lawful employment, (and wandered abroad and visited tippling shops, and lodged in out-houses, and in the open air, and did not give a good account of himself, and wandered abroad and begged, and went about from door to door and placed himself in public places to beg and to receive alms).

Vagrant.
R. L. 212, § 59.

(The complaint may stop at the word "employment", or such part of the matter in parentheses may be added as the case requires.)

1 SECTION 8. The defendant in a prosecution for writing or pub- Justification in
2 lishing a libel may introduce in evidence the truth of the matter cases of libel.
3 contained in the publication charged as libellous, and the truth 1826, 107, § 1
4 shall be a justification, unless actual malice is proved. R. S. 133, § 6.
1853, 396.
G. S. 129, § 77;
172, § 11.

P. S. 167, § 80; 3 Pick. 304. 124 Mass. 340. 151 Mass. 127.
214, § 13. 9 Met. 410. 136 Mass. 441.

1 SECTION 9. In the prosecution of crimes which relate to or affect Proof of
2 real or personal estate, it shall be sufficient, and shall not be a vari- ownership of
3 ance, if it is proved on the trial that, at the time when the crime property.
4 was committed, either the actual or constructive possession or the R. S. 133, § 11.
5 general or special property in the whole or any part of such real or G. S. 172, § 12.
6 personal estate was in the person or community alleged to be the P. S. 214, § 14.
7 owner thereof. 5 Allen, 517.
11 Allen, 110.
103 Mass. 425,
435.
104 Mass. 552.

108 Mass. 466, 469. 164 Mass. 587. 172 Mass. 187.
110 Mass. 503. 114 Mass. 277.

1 SECTION 10. If a crime is alleged to have been committed in Night time
2 the night time, night time shall be deemed the time between one defined.
3 hour after sunset on one day and one hour before sunrise on the 1847, 13.
4 next day; and the time of sunset and sunrise shall be ascertained G. S. 172, § 13.
5 according to mean time in the place where the crime was com- P. S. 214, § 15.
6 mitted. 2 Cush. 589.

1 SECTION 11. If a person who is indicted for a capital crime is, Disposition
2 at the time appointed for the trial, or at any time prior thereto, of insane
3 found by the court to be insane, it may cause him to be removed prisoner.
4 to a state insane hospital for such term and under such limitations 1891, 379, § 12.
5 as it may order.

1 SECTION 12. If a person who is under indictment is, at the Insane pris-
2 time appointed for the trial, found by the court to be insane, it oner to be sent
3 may cause him to be removed to a state insane hospital for such to hospital.
4 term and under such limitations as it may order. 1849, 68.
G. S. 172, § 14.
P. S. 214, § 16.

1 SECTION 13. The jury shall try, according to established forms Jury to decide
2 and principles of law, all criminal causes which are committed to law and fact.
3 them, and, after having received the instructions of the court, shall 1807, 149, § 15.
4 decide, in their discretion, by a general verdict, both the fact and 1855, 152.
5 the law involved in the issue, or they may, at their election, find G. S. 172, § 15.
6 a special verdict. The court shall superintend the course of the P. S. 214, § 17.
7 trials, decide upon the admission and rejection of evidence upon all 10 Pick. 496.
8 questions of law which are raised during the trials and upon all col- 10 Met. 263.
9 lateral and incidental proceedings, and shall also charge the jury. 5 Gray, 185.
100 Mass. 146.
116 Mass. 37, 39.
125 Mass. 203.
132 Mass. 8.
147 Mass. 423.
149 Mass. 68.

1 SECTION 14. If a person who is indicted for a felony is ac- Proceedings on
2 quitted by the verdict of part of the crime charged, and is convicted conviction of
3 of the residue, such verdict may be received and recorded by the part of crime
4 court, and thereupon the defendant shall be adjudged guilty of the charged.
5 crime, if any, which appears to the court to be substantially charged 1784, 66, § 11.
6 by the residue of the indictment, and shall be sentenced and punished 1805, 88, § 2.
7 accordingly. R. S. 137, § 11.
G. S. 172, § 16.
P. S. 214, § 18.
1 Met. 262.
10 Gray, 11.

2 Allen, 163. 97 Mass. 59. 109 Mass. 349.
115 Mass. 150. 142 Mass. 454. 162 Mass. 466, 495.

1 SECTION 15. If a person is acquitted by the jury by reason of Commitment
2 insanity, the jury shall state that fact to the court, which, if satisfied of person ac-
quitted by rea-
son of insanity.

1816, 28, §§ 1-3.
1834, 150, § 3.
R. S. 137, § 12.

that he is insane, may order him to be committed to a state insane hospital under such limitations as may seem proper. 3 4

G. S. 172, § 17.

1862, 223, § 17.

P. S. 214, § 19.

Commitment of person acquitted of murder, etc., by reason of insanity.
1873, 227.
P. S. 214, §§ 20, 21.
1895, 390, § 7.
136 Mass. 489.

SECTION 16. If a person who is indicted for murder or manslaughter is acquitted by the jury by reason of insanity, the court shall order him to be committed to a state insane hospital during his natural life, and he may be discharged therefrom by the governor, with the advice and consent of the council, when he is satisfied, after a hearing, that such person may be discharged without danger to others. 1 2 3 4 5 6 7

Removal to asylum for insane criminals.
1883, 148, § 2.
1889, 90.
1895, 390, § 4.
136 Mass. 489.
151 Mass. 96.
[1 Op. A. G. 322.]

SECTION 17. An insane male prisoner who is described in sections eleven, twelve, fifteen and sixteen may be committed or removed to the state asylum for insane criminals instead of to a state insane hospital if, in the opinion of the court, he has been a criminal or has been vicious in his life, and if he has been held on a charge of felony, the expense of his support in a state insane hospital or in the asylum for insane criminals or in any state charitable institution to which he may be transferred shall be paid by the commonwealth. 1 2 3 4 5 6 7 8 9

Person acquitted, etc., not liable for fees.
R. S. 137, § 13.
G. S. 172, § 18.
P. S. 214, § 22.

SECTION 18. No prisoner or person under recognizance, who is acquitted by verdict or discharged because no indictment has been found against him, or for want of prosecution, shall be liable for any costs or fees or for any charge for subsistence while he was in custody. 1 2 3 4 5

Discontinuance of prosecution under by-law.
1853, 179, § 2.
G. S. 172, § 20.
P. S. 214, § 23.

SECTION 19. In a prosecution before a police, district or municipal court or trial justice under the by-laws of a city or town, the city solicitor, town counsel or other person who is appointed in behalf of such city or town to represent it may enter a nolle prosequi or do anything relative to such prosecution which may be done by the district attorney. 1 2 3 4 5 6

Counsel for inmates of reform school.
1877, 184.
P. S. 214, § 24.

SECTION 20. The court may assign counsel to an inmate of any reform school who is to be tried for an offence alleged to have been committed therein; and shall, upon application, order the superintendent or other officer of such institution to produce at the trial such inmates thereof as, in the opinion of the counsel for the defence, certified in writing, or of the judge, in the absence of counsel, are material witnesses for the defence; and such officer shall obey the order and provide for the custody and safe return of such inmates. 1 2 3 4 5 6 7 8 9

Objection to formal defects, when to be taken.
1864, 250, § 2.
P. S. 214, § 25.
11 Allen, 238.
13 Allen, 550, 554.
98 Mass. 6.
105 Mass. 176.

SECTION 21. An objection to a complaint, indictment or other criminal process for a formal defect which is apparent on the face thereof shall be taken by demurrer or by motion to quash, assigning specifically the objections relied on, before a judgment has been rendered by a police, district or municipal court or a trial justice, or before a jury has been sworn in the superior court. 1 2 3 4 5 6

108 Mass. 457.
110 Mass. 103.
116 Mass. 14.

126 Mass. 235, 474.
131 Mass. 584.
133 Mass. 383.

135 Mass. 539.
136 Mass. 155.
138 Mass. 484.

154 Mass. 405.
157 Mass. 462.
170 Mass. 228.

1 SECTION 22. Whoever is convicted of a crime before a police, Appeals in
2 district or municipal court or trial justice may appeal to the superior criminal cases.
3 court. The case shall be entered in the superior court on the re- 1783, 51, § 3.
4 turn day next after the appeal is taken, and the appellant shall be 1831, 70, § 1.
5 committed to abide the sentence of said court until he recognizes to R. S. 85, § 28;
6 the commonwealth, in such sum and with such surety or sureties as 87, § 36; 138, § 1.
7 the court or trial justice requires, with condition to appear at the 1845, 116, § 2.
8 superior court on said return day and at any subsequent time to 1849, 31.
9 which the case may be continued, if not previously surrendered and G. S. 116, § 32;
10 discharged, and so from time to time until the final sentence, order 173, § 1, 4.
11 or decree of the court thereon, and to abide such final sentence, P. S. 154, § 39;
12 order or decree, and not depart without leave, and in the mean time 155, § 58, § 1.
13 to keep the peace and be of good behavior. The appellant shall 1893, 396, § 47.
14 not be required to advance any fees upon claiming his appeal or in 1894, 431.
15 prosecuting the same. 1897, 490, § 3.
6 Gray, 343.
145 Mass. 375.

1 SECTION 23. Upon such appeal, said courts and trial justices Recognizance
2 shall have the like power to bind witnesses in the case by recogni- of witnesses.
3 zances as they have by chapter two hundred and seventeen when a 1856, 130.
4 prisoner is admitted to bail or committed. 1893, 396, § 48. 1894, 431. G. S. 173, § 2.
P. S. 154, § 11;
155, § 59.

1 SECTION 24. Upon such appeal, the clerk of the police, district Transmission
2 or municipal court shall transmit to the clerk of the superior court of papers.
3 a copy of the complaint and of the record of conviction, the original R. S. 138, § 2.
4 recognizances, a list of the witnesses and a statement of the ex- G. S. 173, § 3.
5 penses; and no other papers shall be required to be transmitted. 1892, 217, § 3.
P. S. 154, § 61.
1893, 396, § 49.
1894, 431.
14 Gray, 390.

1 SECTION 25. Upon such appeal, the trial justice shall make a Copies to be
2 copy of the conviction and other proceedings in the case, and trans- transmitted.
3 mit them with the recognizance and a statement of the expenses to R. S. 138, § 2.
4 the clerk of the superior court. 8 Gray, 482. 11 Gray, 313. G. S. 173, § 3.
14 Gray, 390. 97 Mass. 541. 131 Mass. 417. 147 Mass. 539. 155 Mass. 296. P. S. 155, § 60.
1890, 440, § 10.
2 Met. 19.

1 SECTION 26. Upon such appeal, the copies and records sent to Statement of
2 the superior court shall contain the details of all fees and expenses fees.
3 allowed or paid in the police, district or municipal court or before 1890, 440, § 10.
4 the trial justice. 1891, 325, § 1.

1 SECTION 27. If the appellant fails to enter and prosecute his If appeal not
2 appeal, he shall be defaulted on his recognizance and the superior entered appel-
3 court may impose sentence upon him for the crime of which he lant to be
4 was convicted, as if he had been convicted in said court, and, if he sentenced.
5 is not then in custody, may issue process to bring him into court to 1783, 51, § 3.
6 receive sentence. 1894, 431. 108 Mass. 5. 109 Mass. 361. 160 Mass. 354. R. S. 138, § 4.
G. S. 173, § 5.
P. S. 154, § 12;
155, § 62.
1893, 396, § 50.

1 SECTION 28. The appellant may, at any time before the copy of Withdrawal of
2 the record of conviction has been transmitted to the clerk of the appeal.
3 superior court, come personally before the court or trial justice from 1874, 33, § 1.
4 whose judgment the appeal was taken, and, upon motion, may be P. S. 154, § 12;
5 permitted by the court or trial justice to withdraw his appeal and 155, § 63.
6 abide by the sentence therein. Thereupon the court or trial justice 1893, 396, § 51.
7 shall order that the appellant comply with the sentence appealed 1894, 431.
8 from in the same manner as if it were then first imposed, and the

sureties who had recognized with the appellant upon his recognition to prosecute his appeal shall be discharged. 9
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Withdrawal
if appellant
in jail.
1874, 33, § 2.
P. S. 154, § 12;
155, § 64.
1863, 396, § 52.
1894, 431.

SECTION 29. If the appellant is detained in jail for want of sureties to prosecute his appeal, he may give notice to the jailer of his desire to avail himself of the provisions of the preceding section, and the jailer shall cause him to be produced before the court or trial justice from whose judgment his appeal was taken and the proceedings shall be as provided in the preceding section. 1
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Fees allowed
to jailer.
1874, 33, § 3.
P. S. 154, § 12;
155, § 65.
1890, 328, § 2;
440, § 2.
1891, 325, § 1.
1893, 396, § 53.
1891, 431.

SECTION 30. In such case, compensation shall be allowed and paid by the city or town in which the crime was committed to the jailer for his expenses in the conveyance and custody of the appellant, at the same rate as is allowed to officers serving a mittimus. If the appeal was from a sentence to pay a fine, the fees of the jailer shall be paid by the appellant if, after the appeal is withdrawn, he pays the fine as provided in section twenty-eight. 1
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Decisions on
plea in abate-
ment final.
1850, 196, § 27.
G. S. 113, § 7.

SECTION 31. Decisions of the superior court upon questions raised upon a plea in abatement to an indictment or complaint shall be final. 1
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1880, 118.

P. S. 153, § 8.

Appeal to su-
preme judicial
court.
1820, 79, § 4.
1832, 130, § 3.
R. S. 82, § 28;
138, § 5.
1850, 196, § 26.
G. S. 114, § 10.

SECTION 32. A defendant who is aggrieved by a judgment of the superior court which is founded upon matter of law apparent upon the record in any criminal proceeding, except a judgment upon a plea in abatement, may appeal therefrom to the supreme judicial court. 1
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P. S. 152, § 10.

110 Mass. 188.

126 Mass. 258.

156 Mass. 63.

157 Mass. 386.

160 Mass. 307.

New trial.
1830, 113, § 3.
1832, 130, § 4.
R. S. 82, § 30;
86, § 11; 138,
§ 10.
1855, 152.
G. S. 173, § 7.
P. S. 214, § 28.
111 Mass. 441.
123 Mass. 418.

SECTION 33. The superior court may, at the sitting in which an indictment is tried, or within one year thereafter, upon motion in writing of the defendant, grant a new trial for any cause for which by law a new trial may be granted or if it appears to the court that justice has not been done, and upon such terms or conditions as the court shall order. 1
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Report.
1830, 113, § 4.
1832, 130, § 5.
R. S. 138, § 12.
G. S. 173, § 8.
P. S. 214, § 29.
105 Mass. 468.
126 Mass. 248.

SECTION 34. If, upon the trial of a person convicted in the superior court, a question of law arises, which, in the opinion of the presiding judge, is so important or doubtful as to require the decision of the supreme judicial court, he shall, if the defendant desires or consents to it, report the case so far as may be necessary to present the question of law arising therein; and thereupon the case shall be continued to await the decision of the supreme judicial court. 1
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Exceptions.
1804, 105, § 5.
1817, 185, § 5.
1820, 79, § 5.
1830, 113, § 4.
1832, 130, § 5.
R. S. 82, § 29;
138, § 11.
1851, 261.
1859, 196, §§ 27,
29.
G. S. 115, §§ 7,
8, 10, 11.
1863, 180, § 2.
1880, 118.
P. S. 153, §§ 8,
10, 12, 13.

SECTION 35. Exceptions may be alleged by a defendant in a criminal case who is aggrieved by an opinion, ruling, direction or judgment of the superior court which is rendered upon any question of law arising at the trial of such case or upon a motion for a new trial, but not upon a plea in abatement. The exceptions shall be reduced to writing and filed with the clerk and notice thereof given to the commonwealth within three days after the verdict or after the opinion, ruling, direction or judgment excepted to is given, unless a further time, not exceeding five days, except by consent of 1
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10 the district attorney, is allowed by the court. The clerk, immedi-
 11 ately upon the filing of the exceptions, shall present them to the
 12 court, and if, upon examination thereof by the presiding justice,
 13 they are found conformable to the truth, they shall be allowed by
 14 him. In all cases, the district attorney shall have an opportunity
 15 to be heard concerning the allowance of such exceptions. The pro-
 16 visions of sections one hundred and seven to one hundred and ten,
 17 inclusive, of chapter one hundred and seventy-three, so far as appro-
 18 priate, shall apply to exceptions taken in criminal cases.

1891, 379, § 2.
 1894, 204, 412.
 1895, 153, § 1.
 3 Cush. 212.
 10 Allen, 193.
 110 Mass. 491.
 119 Mass. 209.
 126 Mass. 258.
 140 Mass. 363.
 156 Mass. 61.

1 SECTION 36. If the defendant neglects to enter his appeal, ex-
 2 ceptions or report in the supreme judicial court, or neglects to
 3 take the necessary measures for the hearing of the cause in the
 4 supreme judicial court, the superior court may, upon the applica-
 5 tion of the district attorney and after notice, order that the appeal,
 6 exceptions or report be dismissed and that the judgment, opinion,
 7 ruling or order appealed from, excepted to or reported be affirmed.

Affirmance of
 judgment upon
 non-entry of
 appeal.
 1817, 185, § 5.
 1820, 79, § 4.
 1832, 130, § 3.
 R. S. 82, § 10;
 138, § 8.
 G. S. 112, § 16.
 P. S. 150, § 16.
 1888, 94.
 1900, 372, § 1.

1 SECTION 37. Copies and papers relative to a question of law
 2 which arises in a criminal case in the superior court upon appeal,
 3 exception, report or otherwise shall be prepared by the clerk of the
 4 court and shall thereupon be transmitted to and entered in the law
 5 docket of the supreme judicial court for the proper county as soon
 6 as may be after such question of law has been reserved and duly
 7 made matter of record in the superior court. The entry thereof
 8 shall not transfer the case, but only the question to be determined.

Transmission of
 papers.
 R. S. 138, § 6.
 1859, 196, §§ 26,
 34.
 G. S. 115, § 12.
 1864, 111.
 P. S. 153, § 15.

1 SECTION 38. No motion in arrest of judgment shall be allowed
 2 for a cause existing before verdict, unless it affects the jurisdiction
 3 of the court.

Motions in
 arrest of
 judgment.
 1864, 250, § 3.

P. S. 214, § 27.
 10 Allen, 193.
 129 Mass. 489.

151 Mass. 394.
 153 Mass. 444.
 159 Mass. 61.

160 Mass. 309, 354.
 162 Mass. 339.
 170 Mass. 460

CHAPTER 220.

OF JUDGMENT AND EXECUTION.

1 SECTION 1. A police, district or municipal court may, upon
 2 conviction of the defendant, impose sentence although the de-
 3 fendant is placed on probation. The court may thereupon order
 4 the execution of the sentence to be suspended for such time and
 5 upon such terms and conditions as it prescribes, and place the
 6 defendant in the custody of the probation officer during such sus-
 7 pension. If the defendant has been sentenced to pay a fine and to
 8 stand committed until it is paid, he may pay it to the probation
 9 officer at any time during the period of probation, and said officer
 10 shall give a receipt therefor, keep a record thereof, pay it to the
 11 clerk of the court at the next session of the court and keep on file
 12 the clerk's receipt therefor.

Sentence, not-
 withstanding
 probation.
 1900, 449, § 1.

1 SECTION 2. At any time before the final disposition of the case
 2 of a person who has been placed on probation in the custody of a
 3 probation officer, the probation officer may arrest him without a

Arrest of
 person on
 probation.
 1897, 236.
 1900, 449, § 2.

warrant and take him before the court, or the court may issue a warrant for his arrest. When he is taken before the court, it may, if he has not been sentenced, sentence him or make any other lawful disposition of the case, and if he has been sentenced, it may continue or revoke the suspension of the execution of his sentence. If such suspension is revoked, the sentence shall be in full force and effect.

Sentence, notwithstanding appeal, etc.
1891, 362.
1895, 469.
167 Mass. 13, 144.
170 Mass. 16.
175 Mass. 37.

SECTION 3. Sentence shall be imposed upon conviction of a crime which is not punishable by death, although exceptions have been alleged or an appeal has been taken. The reservation, filing or allowance of exceptions, or the entry of an appeal, shall not stay the execution of the sentence unless the justice imposing it, or a justice of the supreme judicial court, files a certificate that in his opinion there is reasonable doubt whether the judgment should stand. If sentence is so stayed, the justice may at the same time make an order relative to the custody of the prisoner or for admitting him to bail.

—if no statutory punishment.
1782, 9, § 1.
R. S. 139, § 1.
G. S. 174, § 1.
P. S. 215, § 1.

SECTION 4. If no punishment for a crime is provided by statute, the court shall impose such sentence, according to the nature of the crime, as conforms to the common usage and practice in this commonwealth.

13 Allen, 581.

165 Mass. 446.

— to jail or house of correction.
1834, 151, § 17.
R. S. 143, § 17.
G. S. 174, § 4.
P. S. 215, § 3.
1882, 241, § 1.
2 Met. 419.
4 Met. 361.
161 Mass. 120.

SECTION 5. Whoever is convicted of a crime which is punishable wholly or in part by imprisonment in jail may be sentenced to such imprisonment in the house of correction or to solitary imprisonment and confinement at hard labor either in the jail or house of correction; and if convicted of a crime which is punishable by imprisonment in the house of correction may be sentenced to such imprisonment in a jail.

Same subject.
1845, 118.
G. S. 174, § 5.
P. S. 215, § 4.
2 Met. 411.

SECTION 6. Whoever is convicted of a crime which is punishable by a fine, and is liable to imprisonment in the jail for the non-payment of fine, may be sentenced to such imprisonment in the house of correction, and to confinement at hard labor either in the jail or house of correction.

Commitments upon two or more sentences.
1884, 265.

SECTION 7. A convict upon whom two or more sentences to imprisonment are imposed may be fully committed upon all such sentences at the same time, and shall serve them in the order named in the mittimus upon which he is committed.

Second sentence for non-payment of fine.
1874, 253.
P. S. 215, § 5.

SECTION 8. If a convict is sentenced to pay a fine in more than one case and has been committed to a jail, house of correction or other prison for refusing to pay such fine, the subsequent sentence shall take effect upon the expiration of the imprisonment under the former sentence.

Conditional sentence.
1788, 53, §§ 1, 2.
1834, 151, § 17.
R. S. 139, §§ 2, 3.
G. S. 174, §§ 6, 7.
P. S. 215, §§ 6, 7.
5 Met. 560.

SECTION 9. If a person has been convicted of a crime which is punishable, at the discretion of the court, by fine or imprisonment in the jail or house of correction or by fine or imprisonment in the state prison, the court may impose upon him a conditional sentence, and order him to pay a fine within a limited time which shall be

6 expressed in the sentence, and in default thereof to suffer such
 7 imprisonment as is provided by law. He shall be forthwith com-
 8 mitted to the custody of an officer in court or to the jail, to be
 9 detained until the sentence is complied with; and if he does not
 10 within the time limited pay the fine imposed, the sheriff shall cause
 11 the other part of the sentence to be executed forthwith.

1 SECTION 10. Whoever is convicted of a crime which is punish-
 2 able by fine and imprisonment either in the jail or house of correc-
 3 tion, except a registered pharmacist who is convicted under the
 4 provisions of section twenty-nine of chapter one hundred, may, at
 5 the discretion of the court, be sentenced to be punished by im-
 6 prisonment only, or by a fine only, if he shows to the satisfaction
 7 of the court that he has not before been convicted of a similar
 8 crime.

109 Mass. 362.

127 Mass. 452.

155 Mass. 8.

Modification of sentence to fine and imprisonment.

R. S. 139, § 4.

1855, 215, § 39.

G. S. 174, § 8.

1866, 280, § 1.

P. S. 215, § 8.

1896, 397, § 17.

12 Allen, 421,

424, 428.

13 Allen, 581.

1 SECTION 11. If a husband is convicted of an assault upon
 2 his wife, the court may, in addition to the other penalties imposed,
 3 or in lieu of said penalties, order him to recognize with surety or
 4 sureties to keep the peace for any term of not more than two years,
 5 and may at any time revoke such order or reduce the amount re-
 6 quired or order that the recognizance be taken without surety.

Husband as-
saulting wife
to recognize,
etc.

1879, 42.

P. S. 215, §§ 9,

10.

1 SECTION 12. Whoever is convicted of a misdemeanor may, in
 2 addition to the punishment prescribed by law, be required to recog-
 3 nize, with sufficient sureties, in a reasonable sum to keep the peace,
 4 or to be of good behavior, or both, for any term of not more than
 5 two years, and to stand committed until he so recognizes.

Recognizance
to keep the
peace in other
cases.

R. S. 139, § 5.

G. S. 174, § 10.

P. S. 215, § 11.

2 Allen, 61.

1 SECTION 13. Such recognizance shall be filed of record in the
 2 superior court, and, upon a breach of the condition thereof, the
 3 proceedings shall be as provided in chapter two hundred and
 4 sixteen relative to recognizances to keep the peace and be of good
 5 behavior.

Proceedings
on forfeiture
of recogni-
zance.

R. S. 139, § 6.

G. S. 174, § 11.

P. S. 215, § 12.

1 SECTION 14. Whoever is convicted of a crime which is punish-
 2 able by imprisonment in the jail or house of correction may be
 3 sentenced to a jail or house of correction of any county, and the
 4 master or keeper thereof shall receive and detain him in the same
 5 manner as if he had been sentenced by a court sitting in the county
 6 in which such jail or house of correction is situated.

Sentence to
jail, etc., in
any county.

1818, 123, § 6.

1866, 280, § 2.

1879, 370, § 4.

P. S. 215, § 13.

12 Allen, 424.

[1 Op. A. G.

309.]

1 SECTION 15. A female who is convicted of a crime which is
 2 punishable by imprisonment in a jail or house of correction may be
 3 sentenced to the reformatory prison for women: but no sentence
 4 to said reformatory prison shall be for less than one year, except as
 5 provided in section seventy of chapter two hundred and twenty-five.

Female sen-
tenced to
reformatory
prison, when.

1874, 385, § 17.

1880, 114, § 1.

1881, 189.

P. S. 215, § 14.

1895, 218.

1 SECTION 16. A sentence of a female convict of whatever age
 2 to confinement at hard labor shall be executed in the jail, house of
 3 correction or reformatory prison for women as the court orders, and
 4 the court may impose a sentence of imprisonment for such term
 5 as it might impose if the sentence were to be executed in the state
 6 prison.

P. S. 215, § 15.

1889, 113.

12 Cush. 237.

— to confine-
ment at hard
labor, where
executed.

1818, 123, § 8.

1834, 151, § 16.

R. S. 143, § 18.

G. S. 174, § 14.

1874, 385, § 17.

Woman with
infant may
be sentenced
to town
workhouse,
etc.
1854, 416, §§ 1, 4.
G. S. 174, § 12.
P. S. 215, § 16.

SECTION 17. A woman with a nursing infant, who is convicted of a crime which is punishable by imprisonment in the house of correction, may be sentenced to a workhouse in the county; and two dollars a week shall be paid by the county to the town in which the sentence is executed for her support and custody.

Boy to be sen-
tenced to jail
instead of state
prison, when.
1818, 123, § 8.
1834, 151, § 16.
R. S. 143, § 18.
G. S. 174, § 13.
P. S. 215, § 17.

SECTION 18. If a boy who is under the age of sixteen years is convicted of felony and is sentenced to solitary imprisonment and confinement at hard labor for not more than three years, but has not been previously sentenced to the state prison in this commonwealth, or to any state prison or penitentiary in the United States, the sentence shall be executed in the jail.

Sentence over
five years, how
executed.
1811, 32, § 1.
1818, 123, § 1.
1834, 151, § 14.
R. S. 143, § 19.
G. S. 174, § 16.

SECTION 19. A sentence of a male convict to solitary imprisonment and confinement at hard labor for not more than five years may be executed either in the state prison, jail or house of correction, except as provided in the following section.

1870, 206, § 1.

P. S. 215, § 19.

152 Mass. 1.

161 Mass. 120.

Indeterminate
sentence.

R. S. 139, § 9.
G. S. 174, § 17.
1877, 190.
1880, 15, § 1.
P. S. 215, § 20.
1895, 504, § 1.
1897, 294, § 1.
152 Mass. 1.
167 Mass. 144.
169 Mass. 502.
172 Mass. 264.
174 Mass. 369.
177 U. S. 153.

SECTION 20. If a convict is sentenced to the state prison, except for life or as an habitual criminal, the court shall not fix the term of imprisonment, but shall fix a maximum and a minimum term for which he may be imprisoned. The maximum term shall not be longer than the longest term fixed by law for the punishment of the crime of which he has been convicted, and the minimum term shall not be less than two and one-half years. If a convict who has been sentenced to the state prison receives an additional sentence thereto, it shall take effect upon the expiration of the minimum term of the preceding sentence.

Habitual crim-
inals.

1887, 435, § 1.
155 Mass. 163.
158 Mass. 598.
163 Mass. 226.
165 Mass. 133.
173 Mass. 322.
175 Mass. 202.
180 U. S. 311.

SECTION 21. Whoever has been twice convicted of crime and has been sentenced and committed to prison in this or another state, or once in this and once or more in another state, for terms of not less than three years each, and does not show that he has been pardoned for either crime on the ground that he was innocent, shall, upon conviction of a felony in this commonwealth, be considered an habitual criminal and be punished by imprisonment in the state prison for twenty-five years.

Further sen-
tence of con-
vict in state
prison.
1880, 15, § 2.

SECTION 22. A convict who is under sentence of imprisonment in the state prison may be sentenced for a further time of not less than one year.

P. S. 215, § 21.

Sentence to
state prison
may be exe-
cuted immedi-
ately.
1881, 139.
P. S. 215, § 22.

SECTION 23. If a convict who is serving a sentence of imprisonment in a jail or house of correction is convicted of a felony, the court may impose sentence of imprisonment in the state prison and order it to take effect forthwith, notwithstanding the former sentence. The convict shall thereupon be removed to the state prison, and shall be discharged at the expiration of his sentence thereto.

Same subject.
1891, 200.

SECTION 24. If a convict who is serving a sentence of imprisonment in the Massachusetts reformatory is convicted of a crime which is punishable by imprisonment in the state prison or house of correction, the court may impose sentence of imprisonment therein and

5 may order it to take effect forthwith, notwithstanding the former
6 sentence. The convict shall thereupon be removed accordingly, and
7 shall be discharged at the expiration of his sentence thereto.

1 SECTION 25. The form of a sentence to the state prison shall
2 be, that the convict be punished by confinement at hard labor and by
3 solitary imprisonment for such term, not exceeding twenty days at
4 one time, as the court orders. In the execution of such sentence,
5 the solitary imprisonment shall precede the punishment by hard
6 labor, unless the court otherwise orders; but in case of severe ill-
7 ness of the convict, the warden, upon the certificate of the physician
8 of the prison, may postpone the solitary imprisonment until the
9 health of the convict is so far restored that his life will not be en-
10 dangered by such solitary imprisonment.

Form of sen-
tence. Solitary
imprisonment.
R. S. 139, § 8.
G. S. 174, § 18.
1866, 254.
P. S. 215, § 23.
4 Met. 361.
8 Met. 533.
11 Met. 576.
161 Mass. 120.
167 Mass. 11.

1 SECTION 26. If a convict who is sentenced by a court of this
2 commonwealth or of the United States to imprisonment in the state
3 prison holds an office under the constitution or laws of this com-
4 monwealth at the time of his conviction and sentence, it shall be
5 vacated from the time of his sentence. If the judgment against him
6 is reversed upon writ of error, he shall be restored to his office with
7 all its rights and emoluments; but, if pardoned, he shall not by
8 reason thereof be restored, unless it is so expressly ordered by the
9 terms of the pardon.

Offices for-
feited by sen-
tence to state
prison.
R. S. 144, § 31.
G. S. 174, § 19.
P. S. 215, § 24.
24 Pick. 279.

1 SECTION 27. A male person under forty years of age who has
2 not been previously sentenced for crime more than three times upon
3 conviction of crime and who is convicted of a crime which is punish-
4 able by imprisonment in the state prison or in a jail or house of
5 correction may be sentenced to the Massachusetts reformatory.
6 Police, district and municipal courts and trial justices shall have the
7 same jurisdiction to sentence such person to said reformatory as they
8 have to sentence him to such jail or house of correction.

Persons pun-
ishable in
reformatory.
1884, 255, § 8.
1885, 356.
1886, 323, § 5.
1888, 49.

1 SECTION 28. The court which imposes sentence of imprisonment
2 in the reformatory shall not fix the term thereof unless it exceeds
3 five years, but shall merely impose a sentence of imprisonment in
4 the reformatory; but prisoners may be received and held therein
5 who have been sentenced thereto by a court of the United States
6 for a fixed or limited term.

Indeterminate
sentence.
1884, 255, §§ 8, 9.
1886, 323, §§ 1, 6.

1 SECTION 29. Whoever is sentenced to imprisonment in the re-
2 formatory for felony may be held therein for not more than five
3 years unless he is sentenced for a longer term, in which case he
4 may be held for such longer term. Whoever is sentenced to im-
5 prisonment therein for a misdemeanor may be held therein for not
6 more than two years.

Length of sen-
tences.
1886, 323, §§ 2, 3.
1892, 302.

1 SECTION 30. When a convict is sentenced to pay a fine or to be
2 imprisoned, the clerk of the court shall forthwith make out and de-
3 liver to the sheriff or to some officer in court a duly certified tran-
4 script from the minutes of the court of the conviction and sentence,
5 which shall authorize the officer to execute such sentence, and he
6 shall execute it accordingly.

Sheriff, etc., to
execute sen-
tences.
R. S. 139, § 7.
G. S. 174, § 20.
1880, 120, § 1.
P. S. 215, § 25.

Copy of indictment, etc., to be transmitted to warden, etc.
1881, 114.
P. S. 215, § 26.
1884, 255, § 10.

SECTION 31. When a person is sentenced to the state prison, to the Massachusetts reformatory or to the reformatory prison for women, the clerk of the court shall, without charge, transmit to the warden or superintendent, as the case may be, an attested copy of the complaint or indictment under which such person was convicted and the names of the witnesses who testified for and against such person at the trial.

Powers of officer in execution of a warrant of commitment.
1870, 370, § 5.
1879, 294, § 7.
1880, 120, § 3.
P. S. 215, § 27.

SECTION 32. A sheriff, deputy sheriff or constable, when engaged in the execution of a warrant for the commitment of a person to a penal institution which is not in his own county, shall have the same powers in any county through which he may pass as he would have in his own county in the performance of a similar duty.

Return of precept to magistrate; copy with jailer, etc.
1859, 233.
G. S. 174, § 22.
1880, 120, § 2.
P. S. 215, § 28.
11 Gray, 468.

SECTION 33. The officer who serves the precept in a criminal case shall, without charging travel therefor, return it with his doings and fees indorsed thereon to the court or magistrate issuing it, who shall tax, allow and certify the fees as a part of the expenses in the case. In case of commitment, the officer shall leave with the jailer or keeper of the prison an attested copy of the precept, with his return thereon, which shall authorize the detention of the person committed.

Service of new mittimus upon convict.
G. S. 174, § 23.
P. S. 215, § 29.

SECTION 34. If a convict who is imprisoned under sentence is again sentenced to confinement in a prison other than that in which he is then held, the warrant for his commitment in pursuance of the second sentence shall be placed in the hands of the warden or keeper of the prison in which the convict is held, and said warden or keeper, upon the expiration of the first sentence, shall commit the convict in obedience to said warrant.

Default of corporation.
1851, 348, § 1.
G. S. 174, § 29.
P. S. 215, § 30.

SECTION 35. If a corporation, after being duly served with process, fails to appear and answer to an indictment or complaint which is brought against it under the laws of this commonwealth, its default shall be recorded, the charges in the indictment or complaint taken to be true, and judgment shall be rendered accordingly.

Warrant of distress.
1851, 348, § 2.
G. S. 174, § 30.
P. S. 215, § 31.

SECTION 36. If judgment is rendered against a corporation upon an indictment or complaint under the laws of this commonwealth, the court may issue a warrant of distress to compel the payment of the penalty prescribed by law, with interest.

Appointment of time for execution of death sentence.
C. L. 30, § 1.
1776-7, 32, § 24.
R. S. 139, § 11.
1832, 274, §§ 2, 3.
1857, 37.
G. S. 174, § 24.
1876, 166, § 1.
P. S. 215, § 32.
1898, 326, § 1.

SECTION 37. In pronouncing sentence of death upon a person who is convicted of a capital crime, the court shall appoint a week within which the sentence shall be executed. The clerk of the court shall, as soon as may be, make out and deliver to the governor a certified copy of the whole record of the conviction and sentence, and shall immediately thereafter make out, sign and deliver to the sheriff of the county in which the conviction was had a warrant under the seal of the court stating the conviction and sentence, and the week appointed for the execution thereof, and shall at the same time transmit to the warden of the state prison a certi-

1 fied copy of the warrant. Such warrant shall be directed to the
 2 warden of the state prison commanding him to cause execution to
 3 be done in accordance with the provisions of such sentence upon a
 4 day within the week so appointed.

1 SECTION 38. After a convict has been sentenced to the punish-
 2 ment of death, he shall be confined in jail in the county in which
 3 he was convicted until within ten days of the first day of the week
 4 appointed for the execution of the sentence of death. He shall,
 5 within such ten days, at a time chosen by the sheriff, be conveyed
 6 by him or a deputy designated by him, as secretly as may be, to
 7 the state prison, and shall, with the warrant, be delivered to the
 8 warden thereof or to the officer performing the duties thereof. He
 9 shall, unless lawfully discharged from such imprisonment, be kept
 10 in a cell provided for the purpose from the time of such delivery
 11 until the sentence of death is executed upon him, and no person
 12 shall be allowed access to him without an order of the court,
 13 except the officers and employees of the prison, his counsel, and
 14 such physicians, priest or minister of religion as the warden may
 15 approve, and the members of his family who are identified to the
 16 satisfaction of the warden. If the execution of the sentence of
 17 death is respited by the governor, or is otherwise delayed by pro-
 18 cess of law, the convict may, in the discretion of the warden, be
 19 confined in one of the cells in the solitary prison established by
 20 chapter one hundred and nine of the resolves of the year eighteen
 21 hundred and ninety-four.

Confinement
of prisoner
under sen-
tence.
1898, 326, § 2.
1901, 520.

1 SECTION 39. The sentence of death shall be executed by the
 2 warden of the state prison, or by a person acting under his direc-
 3 tion, within the week appointed by the court, unless the governor
 4 pardons the crime, commutes the punishment therefor or respites
 5 the execution. If the execution is respited, the sentence of death
 6 shall be executed within the week beginning on the day next after
 7 the day on which the term of respite expires. The sentence of
 8 death shall be executed upon such day within the week appointed
 9 as the warden elects, at some time between midnight and sunrise;
 10 but no previous announcement thereof shall be made, except to
 11 such persons as may be permitted to be present.

Sentence, when
executed.
1776-7, 32, § 24.
R. S. 139, §§ 11,
12.
G. S. 174, §§ 24,
25.
1876, 166, § 2.
P. S. 215, § 33.
1898, 326, § 3.

1 SECTION 40. The punishment of death shall be inflicted by
 2 causing a current of electricity of sufficient intensity to cause death
 3 to pass through the body of the convict, and the application of
 4 such current shall be continuous until he is dead. The sentence
 5 shall be executed within an enclosure or building for that purpose
 6 adjoining the state prison and the company which furnishes the
 7 electric power or light to the state prison shall provide all neces-
 8 sary electricity for executions at such times as the warden orders.

Death penalty,
how inflicted.
R. S. 139, § 13.
1853, 286, § 2.
1857, 37.
G. S. 174, § 26.
P. S. 215, § 37.
1898, 326, §§ 4,
6, 10.
5 Cush. 407.
11 Cush. 604.

1 SECTION 41. If a person who is convicted of a capital crime is,
 2 at the time when motion for sentence is made, found by the court
 3 to be insane, it may cause such person to be removed to one of the
 4 state insane hospitals for such term and under such limitations as
 5 it may order. If a woman who is convicted of a capital crime is,
 6 at the time when motion for sentence is made, found by the court to

Insane person,
or woman
quick with
child, not to be
sentenced.
1876, 166, § 3.
P. S. 215, § 34.

be quick with child, the court shall not pass sentence upon her until it finds that she is no longer quick with child. 7
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Respite of
execution in
such cases.
R. S. 139, § 12.
G. S. 174, § 25.
1876, 166, § 4.
P. S. 215, § 35.

SECTION 42. If it appears to the satisfaction of the governor and council that a convict under sentence of death has become insane, the governor, with the advice and consent of the council, may, from time to time for stated periods, respite the execution of said sentence, until it appears to their satisfaction that the convict is no longer insane. If it appears to the satisfaction of the governor and council that a female convict under sentence of death is quick with child, the governor, with the advice and consent of the council, shall from time to time respite the execution of said sentence for stated periods until it appears to their satisfaction that she is no longer quick with child. 1
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— in other
cases.
1876, 166, § 5.
P. S. 215, § 36.

SECTION 43. The governor, with the advice and consent of the council, may from time to time respite the execution of a sentence of death for stated periods so long as he may consider it necessary to afford him, with the advice and consent of the council, an opportunity to pardon the convict and to investigate and consider the facts of the case for that purpose. 1
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Witnesses of
the execution.
R. S. 139, § 14.
G. S. 174, § 27.
P. S. 215, § 38.
1898, 326, § 5.

SECTION 44. There shall be present at the execution of the sentence of death, in addition to the warden or deputy warden who performs the execution and such officers of the state prison as he considers necessary, the prison physician, the surgeon general of the militia, a medical examiner for the county of Suffolk, or, if they are unable to be present, such physicians as the warden approves. The physicians present shall be the legal witnesses of the execution. There may also be present the sheriff of the county in which the defendant was convicted or his deputy, a priest or minister of religion and, with the approval of the warden, not more than three other persons. 1
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Return of
warrant.
R. S. 139, § 15.
G. S. 174, § 28.
1876, 166, § 6.
P. S. 215, § 39.
1898, 326, § 7.

SECTION 45. When the warden has executed the sentence of death upon a convict in obedience to a warrant from the court, he shall forthwith make return thereof under his hand, with the doings thereon, to the office of the clerk of said court. 1
2
3
4

CHAPTER 221.

OF FINES AND FORFEITURES.

Fines and for-
feitures, how
recovered.
1793, 43, § 4.
1800, 57, § 4.
R. S. 118, § 42;
133, § 14.
G. S. 176, § 2.
P. S. 217, § 2.

SECTION 1. Fines and forfeitures exacted as a punishment for any offence or for the violation or neglect of any duty imposed by statute may, unless otherwise provided, be prosecuted for and recovered by indictment or complaint or by an action of tort in a court having jurisdiction of the offence or action. 1
2
3
4
5

108 Mass. 139.

124 Mass. 278.

144 Mass. 170.

151 Mass. 60.

— to be paid to
the counties.
R. S. 133, § 14.
1839, 135.

SECTION 2. A fine or forfeiture, which is imposed by the superior court shall be paid over to the treasurer of the county where the 1
2

3 proceeding in which the fine or forfeiture was imposed was tried, or
 4 in the county of Suffolk, to the collector of the city of Boston. A
 5 fine or forfeiture which is imposed by a police, district or municipal
 6 court or by a trial justice shall, except as otherwise provided, be
 7 paid to the city or town in which the crime or offence was com-
 8 mitted. If the whole or any part of a fine is by law payable to a
 9 complainant or informant or to a person or corporation as benefi-
 10 ciary, the court or magistrate may apportion the fine or forfeiture
 11 between such complainant, informant or other beneficiary and the
 12 county, city or town, respectively.

G. S. 176, § 1.
 1860, 191, § 10.
 P. S. 217, § 1.
 1890, 440, § 5.
 1891, 416, § 1.
 183 Mass. 211.
 157 Mass. 15.

1 SECTION 3. In proceedings in the name of the commonwealth
 2 for the recovery of fines, forfeitures or penalties, the whole or any
 3 part of which do not inure to the benefit of the commonwealth, the
 4 court may, upon motion of the district attorney, appoint an attor-
 5 ney to conduct the cause under his direction; but such attorney so
 6 appointed shall not have the right to control the cause nor receive
 7 any compensation from the commonwealth.

Council in pro-
 ceedings for
 penalties.
 1870, 313, § 2.
 P. S. 217, § 3.

1 SECTION 4. The expenses arising in a criminal prosecution, in-
 2 cluding the fees of grand and traverse jurors for travel and attend-
 3 ance therein, shall be paid by the county in which the prosecution
 4 is pending; but no part of the expenses arising under a prosecution
 5 for the violation of a by-law or ordinance of a city or town, except
 6 witness fees, shall be paid by the county.

County to pay
 expense of
 prosecution.
 1764-5, 26, § 6.
 1782, 55.
 1787, 39.
 1791, 53, § 2.
 1817, 145.
 1824, 117.
 1825, 73, § 2.
 R. S. 141, § 1.

1845, 227.
 1850, 68.

G. S. 176, § 4.
 1860, 191, § 10.

1880, 120, § 2.
 P. S. 217, § 4.

1841, 74, § 1.
 1890, 440, § 2.
 1898, 204, § 4.

1 SECTION 5. In a criminal case in which questions of law are
 2 carried to the supreme judicial court, the attorney general or dis-
 3 trict attorney may have the necessary copies of the brief for the
 4 commonwealth printed, and the expense thereof shall be paid in the
 5 same manner as the other expenses in the case.

Expense of
 briefs in crim-
 inal cases.
 1879, 54.
 P. S. 17, § 11.

1 SECTION 6. Before imposing a fine as a penalty or part penalty
 2 for a crime, the court or justice shall determine the reasonable and
 3 actual expenses of the prosecution, including the services of officers
 4 and witnesses, the detention and support of the defendant and the
 5 expense of serving a mittimus or other warrant of commitment;
 6 and may impose a fine, not exceeding the maximum fine prescribed
 7 for the crime, which shall include the whole or any part of the
 8 amount of the expenses so found and determined. If the presiding
 9 justice is of opinion that the maximum fine is an inadequate pen-
 10 alty for the crime committed, he may impose such maximum fine
 11 and order the defendant to pay the whole or any part of the ex-
 12 penses of the prosecution. Defendants who pay such expenses
 13 after commitment shall also pay the expense of commitment.

Expenses of
 prosecution.
 1890, 328, § 1;
 440, § 3.

1 SECTION 7. At the end of every sitting of the superior court
 2 for the transaction of criminal business, the clerk shall make and
 3 deliver to the treasurers of the respective counties, cities or towns
 4 certificates of all fines imposed by the court, to the use of the
 5 commonwealth, county, city or town.

Certificates of
 fines.
 C. L. 151, § 4.
 1693-4, 2, § 1.
 1700-1, 21, § 1.
 1783, 44, § 2.
 R. S. 141, § 8.
 G. S. 176, § 8.

Accounts of
fines, etc.
1891, 236, § 1.

SECTION 8. The clerk of the superior court for the transaction of criminal business for the county of Suffolk, the clerks of the municipal courts in Boston, the sheriff, master of the house of correction or other officer, except those named in the following section, upon receiving fines, fees or other money in any criminal proceedings, which are to be paid to the county of Suffolk or to the city of Boston, shall, before the tenth day of every month, pay over to the collector of said city and account, under oath, for all fines, fees or other money so received during the preceding calendar month, and make the detailed statements now required by law.

Same subject.
1891, 236, § 3.

SECTION 9. The clerks of all courts in the county of Suffolk, except those named in the preceding section, who are required to account to the city of Boston shall, on or before the tenth day of each month, pay over to the collector of said city and account, under oath, for all fines, fees and other money received by them in any criminal proceedings during the preceding calendar month which remain after the payments therefrom allowed by law.

Payment of
witness fees.
1891, 236, § 2.

SECTION 10. The treasurer of the city of Boston shall pay to the persons who are entitled thereto all witness fees or other money due for services rendered in any of the courts named in section eight, or for any of the aforesaid officers, upon presentation to him of a certificate stating the name of the claimant, of the court and of the case, the nature of the services rendered and the amount due therefor, signed by the clerk of the court or by the officer for whom the service was rendered.

Fines, etc., to
be paid to
sheriff, and by
him to county.
1893-4, 2, § 1.
1791, 53, § 2.
R. S. 141, § 9.
1857, 107, § 1.
G. S. 176, §§ 9,
12.
1881, 52, § 1.
P. S. 217, §§ 9,
12.
1890, 218, § 1.
2 Gray, 428.

SECTION 11. Fines and forfeitures imposed in criminal prosecutions by the superior court to the use of the commonwealth, or to any county, or to the city of Boston, and all amounts found to be due on forfeited recognizances, shall, under the direction of the court, be certified by the clerk to the sheriff. The sheriff or a deputy sheriff shall be authorized to receive such fines and forfeitures, but the sheriff shall, within ten days after the final adjournment of the sitting of the court, pay the same without deduction to the county treasurer and render to him, or, in the county of Suffolk, to the collector of the city of Boston, an account, under oath, of all amounts which he has received since the last preceding sitting of the court for fines, forfeitures and forfeited recognizances and the names of the persons from whom they were received and against whom they were awarded. If a sheriff neglects for thirty days to render such account he shall be liable to a penalty of two hundred dollars, which shall be recovered in the manner provided in section thirteen.

Sheriff suffer-
ing escape to
pay fines, etc.
1791, 53, § 3.
R. S. 141, § 9.
1857, 107, § 1.
G. S. 176, § 10.
P. S. 217, § 10.

SECTION 12. A sheriff who, having a person in his custody by virtue of the sentence of a court, voluntarily or negligently suffers him to escape shall be held to have received the fines, forfeitures or forfeited recognizances described in the preceding section, at the time of the escape, and shall be liable for the same, with interest and costs, as if he had received them.

1 SECTION 13. If a sheriff neglects to make such payment for
2 thirty days, the county treasurer shall recover of him in an action
3 of contract the amount of such fines, forfeitures and forfeited recog-
4 nizances, with interest at the rate of twelve per cent from the time
5 of receiving or from the time he is held to have received the same
6 and costs.

Remedy if
sheriff neglects
to pay over
fines.
1791, 53, § 3.
R. S. 141, § 9.
1857, 107, § 1.
G. S. 176, § 11.
P. S. 217, § 11.

1 SECTION 14. A person who is committed to a jail or house of
2 correction in default of payment of a fine may pay it to the keeper
3 of the jail or master of the house of correction, and the warrant
4 for his commitment shall designate the city or town in which the
5 offence for which the fine was imposed was committed and the
6 uses to which such fine is payable by the officer who receives it.

Payments to
jailer or master
of house of
correction.
1881, 52, § 1.
P. S. 217, § 14.
1891, 416, § 2.

1 SECTION 15. Every keeper of a jail and master of a house of
2 correction shall, except in the county of Suffolk as provided in
3 section eight, on the first day of January, April, July and October,
4 pay over to the persons who are entitled thereto all money received
5 by him under the provisions of the preceding section during the
6 preceding three months, and render to the county treasurer an ac-
7 count, under oath, showing the names of the prisoners by whom
8 payments have been so made, the court by which each was com-
9 mitted and the amount received from each.

Jailer and
master of
house of cor-
rection to make
quarterly
returns.
1881, 52, § 2.
P. S. 217, § 15.
1891, 416, § 3.

1 SECTION 16. The county treasurer shall pay over to the persons
2 who are entitled thereto all amounts allowed to them for expenses
3 or fees in criminal prosecutions, or allowed by the courts as re-
4 wards or compensations to prosecutors, which have been duly
5 certified by the clerks, if demanded within three years after the
6 allowance thereof; but he shall pay no such amounts to a trial
7 justice, or to a justice or clerk of a police, district or municipal
8 court, until the justice or clerk has rendered an account in writing
9 of all fines received by him since his last return, and of all fees
10 which have remained in his hands for one year after their allowance.

Expenses to be
paid by county
treasurer if
demanded
within three
years, etc.
1809, 93, § 1.
R. S. 141, § 12.
G. S. 176, § 17.
1860, 191, §§ 8,
10.
1861, 184.
P. S. 217, § 16.
14 Allen, 217.

TITLE III.

OF PRISONS AND IMPRISONMENT.

CHAPTER 222. — Of the Board of Prison Commissioners.

CHAPTER 223. — Of the State Prison, the Massachusetts Reformatory and the Reformatory Prison for Women.

CHAPTER 224. — Of Jails and Houses of Correction.

CHAPTER 225. — Of the Officers and Inmates of Penal and Reformatory Institutions, and of Pardons.

CHAPTER 222.

OF THE BOARD OF PRISON COMMISSIONERS.

Board of
prison com-
missioners.
1827, 118, §§ 1,
2, 16.
R. S. 144, §§ 2,
3, 23.
1850, 37.
G. S. 179, §§ 8,
36.
1870, 370, §§ 1,
10, 11.
1879, 294, §§ 1,
35.
P. S. 219, §§ 1, 2.
1893, 453.
1901, 364, §§ 1, 2.
[1 Op. A. G.
487.]

SECTION 1. There shall be a board of prison commissioners, consisting of five persons, two of whom shall be women, and one of whom shall be appointed annually in June by the governor, with the advice and consent of the council, for a term of five years from the first Wednesday of July. The governor shall designate one member as chairman of the board, and he shall receive a salary of four thousand dollars a year. The other members of the board shall not receive any compensation; but they and the chairman shall be reimbursed their actual personal expenses which are incurred while they are engaged in the performance of their official duties. No member of the board shall be concerned or interested, directly or indirectly, in a contract, purchase or sale which is made on account of any prison. The board may delegate to the chairman any of its powers and duties, except the authority to release and transfer prisoners.

Secretary and
clerical assist-
ance.
1870, 370, § 11.
1877, 120, § 1.
1879, 294, §§ 2,
31.
P. S. 219, §§ 3,
39.
1885, 52.
1886, 275.
1888, 328.
1895, 431.

SECTION 2. The commissioners shall appoint a secretary who shall not be a member of the board, but shall be its executive officer, and shall hold office during the pleasure of the commissioners. He shall receive from the commonwealth an annual salary of twenty-five hundred dollars, and his necessary expenses which are incurred in the performance of his official duties. The commissioners may elect one of their members secretary pro tempore who, in the absence of the secretary, shall perform his duties. They may expend annually for clerical assistance such sums as may be appropriated therefor by the general court.

Duties; rules.
1827, 118, § 7.
R. S. 144, § 9.
G. S. 179, § 14.

SECTION 3. They shall have the general supervision of the state prison, of the Massachusetts reformatory, of the reformatory prison

3 for women and of jails and houses of correction. They shall
 4 make rules for the direction of the officers of such institutions in
 5 the performance of their duties, for the government, discipline and
 6 instruction of the convicts therein, for the custody and preservation
 7 of the property connected therewith, for the supply of food, cloth-
 8 ing and bedding in the state prison, Massachusetts reformatory
 9 and reformatory prison for women, for teaching prisoners who are
 10 committed to a jail or house of correction for six months or more
 11 to read and write, for securing proper exercise for unemployed sen-
 12 tenced prisoners in jails and houses of correction and for securing
 13 medical examination and supervision of prisoners in jails and houses
 14 of correction who are punished by solitary imprisonment. As soon
 15 as may be after such rules have been made, the commissioners shall
 16 submit copies thereof to the governor and council who may approve,
 17 annul or modify them. Jailers, keepers of houses of correction,
 18 county commissioners and the penal institutions commissioner of
 19 the city of Boston shall make no rules inconsistent with the afore-
 20 said rules.

1870, 370, §§ 7,
 9, 10.
 1874, 385, § 12.
 1879, 294, §§ 10,
 12, 25, 35, 36.
 1881, 90, § 3.
 P. S. 219, §§ 14,
 16.
 1884, 255, § 28.
 1895, 146, P. S.
 259.
 [1 Op. A. G.
 241, 290.]

1 SECTION 4. The full board shall visit the state prison, Massa-
 2 chusetts reformatory and the reformatory prison for women semi-
 3 annually and shall make a thorough examination thereof. The
 4 commissioners or one of them shall also visit said prisons at least
 5 once in each month; and a majority of the board shall visit said
 6 prisons once in three months, for the purpose of inspecting the
 7 books and all the affairs thereof and of ascertaining whether the
 8 laws and rules are duly observed, the officers competent and faith-
 9 ful and the convicts properly governed and employed. They shall
 10 forthwith report to the governor and council any violation of law
 11 or neglect or omission of duty, which comes to their knowledge, by
 12 any officer of the state prison, Massachusetts reformatory or reform-
 13 atory prison for women who holds his office by appointment of the
 14 governor and council.

Visits to
 prisons.
 1827, 118, § 7.
 R. S. 144, §§ 10,
 11.
 G. S. 179, §§ 15,
 18.
 1870, 370, § 10.
 1874, 385, § 14.
 1879, 294, §§ 14,
 15, 35.
 P. S. 219, §§ 19,
 20.

1 SECTION 5. They or one of them shall visit each jail and house
 2 of correction at least once in six months, for the purpose of inspect-
 3 ing the books and all the affairs thereof and of ascertaining whether
 4 the laws and rules are duly observed, the officers competent and
 5 faithful and the convicts properly governed and employed; and,
 6 for this purpose, they shall have all the powers which county com-
 7 missioners, or the penal institutions commissioner of the city of
 8 Boston, have as inspectors of prisons in their several counties.

— to jails, etc.
 1870, 370, § 8.
 1879, 294, § 11.
 P. S. 219, § 15.

1 SECTION 6. Clerks of courts shall annually, on or before the
 2 fifteenth day of October, make a report to the commissioners of all
 3 criminal cases which were commenced in the superior court in
 4 the several counties during the year ending on the thirtieth day of
 5 September, and of all criminal cases entered therein on appeal dur-
 6 ing such time. Clerks of police, district and municipal courts, or
 7 the justices if there are no clerks, and trial justices shall annually,
 8 at the same time, and for the same period, make a like report of
 9 all criminal cases in which such courts or justices have exercised
 10 jurisdiction, and shall state whether such jurisdiction was final or

Reports by
 clerks of courts
 of criminal
 cases.
 1851, 216, § 2.
 1852, 289, § 3.
 G. S. 14, §§ 11,
 12, 15.
 1881, 66.
 P. S. 219, §§ 34,
 35, 37.
 1882, 226, § 1.

otherwise. Blank forms for such reports shall be prepared and furnished by the prison commissioners. Whoever refuses or neglects to make the report required of him by this section shall forfeit two hundred dollars.

Monthly
reports of
arrests.
1882, 226, § 2.
1892, 290, § 3.

SECTION 7. The board of police of the city of Boston, city marshals or chiefs of police of other cities and of towns and every officer who makes an arrest in a city or town which does not have a city marshal or chief of police shall make monthly reports to the prison commissioners of the number of persons of each sex who have been arrested in their several cities and towns. Such reports shall be classified according to the offences. An officer who refuses or neglects to make such report shall forfeit fifty dollars.

Reports of
commission-
ers to gov-
ernor.
1893, 428.

SECTION 8. The commissioners shall, at least once in six months, report in writing to the governor the condition of the state prison, the Massachusetts reformatory and the reformatory prison for women, and shall so report to the governor when, in their judgment, the conditions of administration, financial management or discipline in any of said institutions require executive action.

— to general
court.
1827, 118, § 7.
R. S. 143, § 33;
144, § 11.
1840, 15, § 3.
1848, 29, § 2.
1857, 40, § 1.
1858, 46, § 1.
1859, 139, § 2.
G. S. 178, § 68;
179, § 18.
1864, 303, § 1.
1870, 370, § 12.
1874, 385, § 22.
1879, 294, §§ 33,
35.
1881, 66.
P. S. 219, § 38.
1882, 226, § 2.
1884, 255, § 31.
1887, 447, § 14.
1901, 364, § 2.

SECTION 9. They shall annually, in the first week in January, make a full and complete report to the general court for the preceding year, showing fully and in detail the actual condition on the thirtieth day of September of the state prison, the Massachusetts reformatory, the reformatory prison for women and of each jail and house of correction, the number of inmates in each, such statistics from the reports required by section six as will show the results of criminal prosecutions and such statistics from the reports required by section seven, and by section eighty-five of chapter two hundred and seventeen, and such suggestions and recommendations as they may consider proper. The report shall state the industries which have been carried on in the institutions named in section forty-three of chapter two hundred and twenty-five during the year, the number of prisoners employed in each, the greatest and smallest number thereof at any one time, the kind and quantity of goods manufactured, the amount thereof sold to such institutions and otherwise and the prices received therefor. The report shall include the reports made to them by the warden of the state prison, the superintendent of the Massachusetts reformatory and of the superintendent of the reformatory prison for women. The report shall also contain estimates of the amounts which will be required by said prisons during the following year for salaries, subsistence, clothing, bedding, fuel, repairs and incidentals and a statement of the probable income of each prison from labor and all other sources.

CHAPTER 223.

OF THE STATE PRISON, THE MASSACHUSETTS REFORMATORY AND THE REFORMATORY PRISON FOR WOMEN.

- SECTIONS 1-19. — The State Prison.
- SECTIONS 20-27. — The Massachusetts Reformatory.
- SECTIONS 28-39. — The Reformatory Prison for Women.
- SECTIONS 40-45. — Prison Contracts.
- SECTION 46. — Appropriations.

THE STATE PRISON.

General Provisions.

1 SECTION 1. The state prison at Boston in the county of Suffolk
2 shall be the general penitentiary and prison of the commonwealth in
3 which all male persons who have been convicted of crime in a court
4 of this commonwealth or in any court of the United States and who
5 have been sentenced by them according to law to solitary imprison-
6 ment and confinement in the state prison at hard labor shall be
7 securely confined and employed at hard labor; but a person who has
8 been convicted and sentenced before a court of the United States
9 need not be received in said prison unless the United States shall
10 agree with the prison commissioners to pay all expenses incurred by
11 the commonwealth in maintaining him therein.

Purposes of
state prison.
1805, 113, §§ 1, 2.
1811, 32, §§ 1, 2.
1827, 118, § 10.
R. S. 144, §§ 1,
30.
G. S. 179, § 1.
1869, 334.
1878, 62.
P. S. 221, § 1.
1884, 255, § 6.
1901, 358.

1 SECTION 2. The governor and council shall visit the prison
2 annually, and as much oftener as they may think proper, for the
3 purpose of examining into its affairs and of ascertaining its condi-
4 tion. They shall inquire into all alleged abuses or neglects of
5 duty and may make such alterations in the general discipline of the
6 prison as they find necessary.

Annual visita-
tion by gov-
ernor and
council.
1811, 32, § 5.
1827, 118, § 17.
R. S. 144, § 49.
G. S. 179, § 5.
P. S. 221, § 5.

Officers and Salaries.

1 SECTION 3. The officers of the state prison shall be a warden,
2 deputy warden, chaplain, physician and surgeon, clerk, engineer,
3 assistant engineer, electrician, steward who shall be employed in
4 the kitchen department of the prison, four turnkeys, as many watch-
5 men, not exceeding forty-nine, and as many assistant watchmen,
6 not exceeding five, as the warden, subject to the approval of the
7 prison commissioners, may find necessary. In certifying the names
8 of persons eligible to appointment as assistant watchmen, the civil
9 service commissioners shall certify the names of persons who are
10 over the age of twenty-five and under the age of forty years.

Officers.
1805, 113, § 3.
1811, 32, § 3.
1827, 118, § 1.
1829, 16, § 1;
114, § 2.
R. S. 144, §§ 2, 6.
1850, 289, § 2.
1852, 242.
1857, 122, § 1.
G. S. 179, § 7.
1874, 133.
1878, 269.
1879, 294, §§ 34,
35.
1881, 178, § 1.
P. S. 221, § 6.

1882, 203, § 1. 1889, 412, § 1. 1894, 477, § 2. 1900, 286, § 1.
1888, 264, § 1. 1893, 456. 1899, 245, §§ 1, 4.

1 SECTION 4. The warden shall be appointed by the prison com-
2 missioners, and shall hold his office during their pleasure. All
3 other officers shall be appointed by the warden, and shall hold their
4 offices during the pleasure of the warden. G. S. 179, §§ 9-11. 1879, 294, § 13.

Appoint-
ments.
1814, 156, §§ 1, 2.
1827, 118, §§ 2, 3.
1829, 114, § 2.
R. S. 144, §§ 4-6
1857, 122, § 1.

1881, 178, § 2. 1882, 203, § 2. 1894, 477, § 2. 1900, 286, § 1.
P. S. 221, §§ 7, 8. 1887, 355. 1899, 245, § 1. 1901, 364, § 3.

Bond of
warden.
1811, 32, § 3.
1827, 118, § 3.
R. S. 144, § 15.
G. S. 179, § 23.
P. S. 221, § 17.
1901, 364, § 3.

SECTION 5. The warden shall, before entering upon the performance of his official duties, give bond to the commonwealth in the sum of twenty thousand dollars, with sureties who shall be approved by the prison commissioners, conditioned faithfully to account for all money placed in his hands as treasurer and faithfully to perform the duties of warden. The approval of the sureties shall be indorsed on the bond, and it shall be filed in the office of the treasurer and receiver general.

General
powers and
duties of
warden.
1811, 32, § 3.
1827, 118, §§ 3, 10.
R. S. 144, §§ 16,
25, 30.
G. S. 179, §§ 27,
28.
P. S. 221, §§ 20,
21.
1901, 224.

SECTION 6. The warden shall have the custody and control of all convicts in the prison and shall govern and employ them according to law, pursuant to their respective sentences and to the rules and regulations of the prison, until their sentences have been performed or they are otherwise discharged by due course of law. He shall also have the charge and custody of the prison, and of the land, buildings, furniture, tools, implements, stock, provisions and all other property belonging to it or within its precincts. He shall be treasurer of the prison, and shall receive and disburse all money paid by the commonwealth for the support thereof, and shall cause regular and complete accounts to be kept of all the property, expenses, income and business of the prison. He may, with the approval of the board of prison commissioners, expend not more than three hundred dollars annually for the entertainment of official and other visitors to the state prison, such expenditures to be paid out of the annual appropriations for the support of said prison.

Warden to pro-
pose alteration
of rules, etc.
1827, 118, § 3.
R. S. 144, § 6.
G. S. 179, § 26.
1879, 294, § 34.

SECTION 7. The warden shall from time to time, in writing, suggest to the commissioners such alterations in the rules and regulations as he considers advisable for the direction of the officers and for the government of the prison.

P. S. 221, § 19.

Vacancy in
office of
warden.
1827, 118, § 4.
R. S. 144, §§ 26,
27.
G. S. 179, §§ 30,
31.
1879, 294, § 34.
P. S. 221, §§ 22,
23.

SECTION 8. If the office of warden is vacant, or if the warden is absent from the prison or is unable to perform the duties of his office, the deputy warden shall have the powers, perform the duties and be subject to the liabilities of the warden. If the office of warden becomes vacant, the commissioners may require the deputy warden to give a bond to the commonwealth in the sum of ten thousand dollars, with sureties who shall be approved by them, conditioned for the faithful performance of his duties as deputy warden and treasurer until a warden is appointed. After the approval of such bond, the deputy shall, so long as he performs the duties of the office, receive the salary of the warden in lieu of his salary as deputy warden. If the deputy warden does not give such bond when required, the commissioners may remove him from the office of warden and appoint a warden pro tempore, who shall give such bond, and shall have the power and authority, perform the duties and receive the salary of the warden until a warden is duly appointed and qualified.

Oath of sub-
ordinate
officers.
1893, 426, § 1.

SECTION 9. All subordinate officers of the state prison, before entering upon the performance of their official duties, shall take and subscribe the following oaths:

I, A. B., do solemnly swear that I will bear true faith and allegiance to the commonwealth of Massachusetts, and will support the constitution thereof. So help me, God.

I, A. B., do solemnly swear that I will obey the lawful orders of all my superior officers. So help me, God.

I, A. B., do solemnly swear and affirm that I will faithfully and impartially discharge and perform all the duties incumbent on me in the office to which I have been appointed, according to the best of my abilities and understanding, agreeably to the rules and regulations of the constitution, the laws of the commonwealth and the rules provided in accordance with law for the government of the state prison. So help me, God.

The oaths may be administered by any officer who is authorized by law to administer an oath and a record thereof shall be in the possession of the warden.

SECTION 10. Each of said officers shall give bond to the commonwealth in the sum of one thousand dollars, with sureties, who shall be approved by the warden, conditioned to obey the rules of the prison and faithfully to perform his duties as such officer, and not to leave the service of the commonwealth, without giving at least ten days' notice in writing to the warden, unless sooner released by him. The approval of the sureties shall be indorsed on the bond, and it shall be filed in the office of the treasurer and receiver general.

Bond of subordinate officers.
1893, 426, § 2.
1901, 364.

SECTION 11. The warden and deputy warden shall reside constantly within the precincts of the prison. The deputy warden, clerk, watchmen, assistant watchmen and all other subordinate officers of the prison shall perform such duties in the charge and oversight of the prison, the care of its property and the custody, government, employment and discipline of the convicts, as the warden, in conformity to law and the rules and regulations of the prison, may require.

Residence of warden and deputy at prison.
1827, 118, § 5.
R. S. 144, § 28.
G. S. 179, § 25.
P. S. 221, 18.
1890, 245, 2.
1900, 286, 2.

SECTION 12. The chaplain shall conduct divine service in the chapel of the prison, shall instruct the convicts in their moral and religious duties, visit the sick on suitable occasions, have charge of the school and library of the prison under the direction of the warden and shall devote his entire time to the duties of his office.

Duty of chaplain.
1814, 156, § 1.
1827, 118, § 6.
R. S. 144, § 12.
G. S. 179, § 19.
1870, 243, § 1.
P. S. 221, § 12.
1901, 364.

SECTION 13. The physician and surgeon shall visit the hospital of the prison at least once each day, and as much oftener as may be necessary, shall prescribe for convicts who are ill, and shall attend to the regimen, clothing and cleanliness of convicts who are in the hospital. He shall keep a regular journal of all admissions to the hospital, the time of admission, the nature of the disease, his prescriptions, the treatment of each patient and the time of his discharge from the hospital or of his death. The journal shall also contain entries of all orders given for supplies for the hospital department, specifying the articles ordered, and it shall remain at the prison. All such orders shall be in writing, and the warden shall provide the supplies so ordered.

— of physician and surgeon.
1814, 156, § 2.
1827, 118, § 6.
R. S. 144, § 13.
G. S. 179, § 20.
P. S. 221, § 13.

Care and treat-
ment of sick
convicts.
R. S. 144, § 14.
G. S. 179, § 22.
P. S. 221, § 15.

SECTION 14. If a convict complains of illness which requires medical aid, notice thereof shall be given to the physician, who shall visit the convict, and, if in his opinion the illness requires the removal of the convict to the hospital, the warden may order such removal, and the convict shall remain in the hospital until the physician determines that he may leave it without injury to his health.

Subsistence
and diet in the
hospital.
1827, 118, § 15.
R. S. 144, § 46.
G. S. 179, § 60.
P. S. 221, § 16.

SECTION 15. He shall have the direction of the subsistence and diet of the convicts in the hospital; but his order for all articles of comfort or indulgence which are not included in their regular hospital rations shall be in writing and for a term of not more than one week.

Same subject.
1859, 234.
G. S. 179, § 21.
P. S. 221, § 14.

SECTION 16. He shall attend upon all insane convicts, and, if in his opinion they can be removed to the prison hospital without detriment or danger to the other patients or inmates of the prison, he shall order them to be so removed and shall see that they have sufficient daily exercise outside their cells or places of confinement.

Officers to have
no other busi-
ness.
1827, 118, § 8.
R. S. 144, § 7.
G. S. 179, § 12.
P. S. 221, § 9.

SECTION 17. Neither the warden nor any officer appointed by him or by him and the commissioners shall be employed in any business for private emolument or which does not pertain to the duties of his office.

Uniforms, etc.
1873, 193, § 1.
1875, 56, § 1.
P. S. 221, § 10.

SECTION 18. The officers of the prison, except the clerk, physician and chaplain, shall, while on duty, wear such uniform, cap or badge as the warden may from time to time prescribe.

Salaries.
1811, 32, § 12.
1814, 156, § 3.
1818, 19.
1827, 118, § 8.
1829, 114, § 3.
1832, 129, § 1.
1833, 67, § 1.
R. S. 144, § 8.
1834, 270.
1855, 334.
1857, 122, § 2;
196.
G. S. 179, § 13.
1867, 312.
1870, 243.
1871, 301.
1878, 269.
1881, 178, § 2.
P. S. 221, § 11.
1882, 203, § 3.
1884, 95.
1888, 264, § 2.
1889, 412, § 2.
1893, 455.
1894, 370.
1899, 245, § 3.
1900, 286, § 3.

SECTION 19. The officers of the prison shall receive the following annual salaries: the warden, four thousand dollars: the chaplain, two thousand dollars: the physician and surgeon, one thousand dollars; the deputy warden, two thousand dollars: the clerk, two thousand dollars; the engineer, fifteen hundred dollars: the assistant engineer, not more than one thousand dollars; the electrician, not more than twelve hundred dollars; the steward, twelve hundred dollars; each turnkey, twelve hundred dollars; each watchman who has been in the service of the prison for six years or more, twelve hundred dollars; each watchman who has been in said service for three years and for less than six years, one thousand dollars: each watchman who has been in said service for less than three years, eight hundred dollars; the assistant watchmen, not more than eight hundred dollars each. In fixing the rate of compensation of watchmen, previous service in any prison of the commonwealth shall be considered. No other perquisite, reward or emolument shall be allowed to or received by any of them, except that the warden and deputy warden shall be allowed sufficient house room, properly furnished, and fuel and light, for themselves and families. The compensation of the assistant engineer, of the electrician and of the assistant watchmen shall be fixed by the warden, with the approval of the prison commissioners.

THE MASSACHUSETTS REFORMATORY.

1 SECTION 20. The Massachusetts reformatory at Concord in the
 2 county of Middlesex shall be the reformatory prison for the com-
 3 monwealth in which all male persons under forty years of age, who
 4 have been convicted of crime in the courts of this commonwealth or
 5 of the United States and who have been duly sentenced or removed
 6 thereto shall be imprisoned and detained in accordance with the
 7 sentences or orders of said courts and the rules and regulations of
 8 said reformatory.

Massachusetts
 reformatory.

1 SECTION 21. The officers of the reformatory shall be a superin-
 2 tendent, deputy superintendent, chaplain, physician, clerk, engi-
 3 neer, four turnkeys and as many watchmen, not exceeding fifty-six,
 4 as the superintendent, subject to the approval of the prison commis-
 5 sioners, may consider necessary

Officers of the
 reformatory.
 1884, 255, § 19.
 1888, 335, § 1.
 1889, 408, § 1.
 1890, 255.
 1893, 333, § 1.
 1894, 477, § 2.

1 SECTION 22. The superintendent shall be appointed by the
 2 prison commissioners, and shall hold office during their pleasure.
 3 All other officers of said reformatory shall be appointed by the
 4 superintendent, and shall hold their offices during the pleasure of
 5 the superintendent.

Appointment
 of superintend-
 ent, physician,
 etc.
 1884, 255, §§ 20,
 21.
 1901, 364, § 3.

1 SECTION 23. The superintendent shall, before entering upon the
 2 performance of his official duties, give bond to the commonwealth
 3 in a sum and with sureties approved by the prison commissioners,
 4 conditioned faithfully to account for all money received by him
 5 and faithfully to perform his duties as superintendent.

Bond of super-
 intendent.
 1884, 255, § 24.
 1901, 364.

1 SECTION 24. The superintendent shall reside at all times within
 2 the precincts or dependencies of the reformatory, he shall have the
 3 custody and control of all prisoners committed to the reformatory,
 4 the management and direction of the reformatory, under the rules
 5 and regulations thereof, and the custody and control of the build-
 6 ings and property of the commonwealth connected therewith. He
 7 shall receive and securely keep, according to the terms of the sen-
 8 tence, any male person who is sentenced to the reformatory by any
 9 court of the United States, or who is sentenced by such court to any
 10 other prison and removed to the reformatory. He shall purchase
 11 all necessary supplies for the reformatory, and shall receive and
 12 pay out all money advanced by the commonwealth for the support
 13 thereof. He shall cause full and accurate books of account of the
 14 property, expenses, income and business of the reformatory to be
 15 kept. He may, with the approval of the board of prison commis-
 16 sioners, expend not more than three hundred dollars annually for
 17 the entertainment of official and other visitors to the reformatory,
 18 such expenditures to be paid out of the annual appropriations for the
 19 support of said reformatory.

Duties and
 powers of
 superintend-
 ent.
 1884, 255, §§ 23,
 24.
 1886, 323, § 6.
 1901, 224.

1 SECTION 25. If the office of superintendent is vacant, or if the
 2 superintendent is absent from the reformatory or is unable to per-
 3 form the duties of his office, the deputy superintendent shall have
 4 the powers, perform the duties and be subject to the liabilities of the

Deputy super-
 intendent.
 Superintend-
 ent pro tem-
 pore.
 1884, 255, §§ 25,
 26.

superintendent. If the office of superintendent becomes vacant, the prison commissioners may require the deputy superintendent to assume the duties of superintendent, and to give bond to the commonwealth in the sum of ten thousand dollars, with sureties who shall be approved by them, conditioned for the faithful performance of his duties as deputy superintendent until a superintendent is appointed and faithfully to account for all money received by him as such. After the approval of said bond, the deputy superintendent shall, so long as he performs the duties of superintendent, receive the salary of that officer in lieu of his salary as deputy superintendent. If the deputy superintendent does not give such bond when required, the prison commissioners may relieve him from the duties of superintendent and appoint a superintendent pro tempore, who shall give such bond, and shall have the power and authority, perform the duties and receive the salary of the superintendent until a superintendent is duly appointed and qualified.

Duties of
chaplain.
1884, 255, § 27.
1890, 255.

SECTION 26. The chaplain shall devote his whole time to the instruction of the prisoners and to the promotion of their moral and religious well-being.

Salaries.
1884, 255, § 22.
1888, 335, § 2.
1889, 408, § 2.
1893, 333, § 2.

SECTION 27. The officers of the reformatory shall receive the following annual salaries: the superintendent, thirty-five hundred dollars; the deputy superintendent, two thousand dollars; the chaplain, two thousand dollars; the physician, one thousand dollars; the clerk, two thousand dollars; the engineer, fifteen hundred dollars; each turnkey, twelve hundred dollars; each watchman who has been in the service of the reformatory for six years or more, twelve hundred dollars; each watchman who has been in said service for three years and less than six years, one thousand dollars; each watchman who has been in said service for less than three years, eight hundred dollars. In fixing the rate of compensation of the officers as aforesaid, previous service in any prison of the commonwealth shall be considered. No other perquisite, reward or emolument shall be allowed to or received by any of the said officers, except that the superintendent and deputy superintendent shall be allowed sufficient house room, properly furnished, and fuel and light, for themselves and their families.

THE REFORMATORY PRISON FOR WOMEN.

Prison for
women.
1874, 385, § 3.
P. S. 221, § 43.
1887, 426, § 1.
1896, 304.

SECTION 28. The reformatory prison for women at Sherborn in the county of Middlesex shall be the prison of the commonwealth in which all females who have been convicted of crime in the courts of the commonwealth or of the United States and who have been duly sentenced or removed thereto shall be imprisoned and detained in accordance with the sentences or orders of said courts and the rules and regulations of said prison.

Officers of
prison.
1874, 385, §§ 5, 8.
1881, 43.
P. S. 221, §§ 44,
47.

SECTION 29. The officers of said prison shall be a superintendent, deputy superintendent, chaplain, physician, clerk, as many matrons, assistant matrons and deputy matrons, not exceeding

4 twenty-six, as the superintendent and the commissioners may judge
5 necessary. All said officers shall be women, except that the super-
6 intendent may be either a man or a woman.

1 SECTION 30. The superintendent shall be appointed by the
2 prison commissioners, and hold office during their pleasure. All
3 other officers and employees, except the steward, shall be appointed
4 by the superintendent, and shall hold their offices during the
5 pleasure of the superintendent.

Appointment
of superintend-
ent, etc.
1874, 385, §§ 6, 7.
1879, 294, § 23.
P. S. 221, §§ 45,
46.
1901, 364, § 3.

1 SECTION 31. The superintendent shall, before entering upon
2 the performance of his official duties, give bond to the common-
3 wealth in the sum of ten thousand dollars, with sureties who shall
4 be approved by the prison commissioners, for the faithful perform-
5 ance of his duties.

Bond.
1874, 385, § 10.
P. S. 221, § 49.
1883, 267, § 1.
1901, 364.

1 SECTION 32. The commissioners may, in behalf of the common-
2 wealth, hold not more than one acre of land within the town of
3 Sherborn, which may be used for the burial of prisoners who die
4 in the prison.

Burial place
for convicts.
1882, 213.

1 SECTION 33. The superintendent shall reside at all times within
2 the precincts or dependencies of the prison, shall have the cus-
3 tody and control of all prisoners committed thereto and shall gov-
4 ern and employ them according to law, pursuant to their sentences
5 and the rules and regulations of the prison. He shall have the
6 management and direction of the prison, its servants and employees,
7 and all its affairs, except as otherwise provided.

Powers and
duties of super-
intendent.
1874, 385, § 10.
P. S. 221, § 49.
1883, 267, § 1.

1 SECTION 34. He shall receive and disburse all money paid
2 by the commonwealth for the support of said prison, shall pur-
3 chase all supplies and all other articles needed for carrying on and
4 managing the prison, shall have the custody and control of all
5 property connected with or belonging to the prison and shall cause
6 regular and complete books of accounts of all the property, ex-
7 penses, income and business of the prison to be kept.

Control of
property.
1883, 267, § 1.

1 SECTION 35. If the superintendent is absent from the prison, or
2 is unable to perform the duties of his office, the deputy superin-
3 tendent shall have the powers, perform the duties and be subject to
4 the liabilities of the superintendent. If the office of superintendent
5 is vacant, the prison commissioners may require the deputy
6 superintendent to perform the duties of superintendent and to give
7 a bond to the commonwealth in the sum of ten thousand dollars,
8 with sureties who shall be approved by them, conditioned for the
9 faithful performance of her duties as deputy superintendent until a
10 superintendent is appointed and to faithfully account for all money
11 which comes into her hands as such. After the approval of her
12 bond, she shall, so long as she performs the duties of superintend-
13 ent, receive the salary of that officer in lieu of her salary as
14 deputy superintendent. If she does not give such bond when re-
15 quired, the prison commissioners may remove her from office and
16 appoint a superintendent pro tempore, who shall give such bond,

Deputy super-
intendent.
Bond.
1883, 267, §§ 3, 4.

and shall have such power and authority, perform such duties and receive such salary until a superintendent is duly appointed and qualified.

Duties of chaplain.
1884, 43, § 1.

SECTION 36. The chaplain shall, in addition to her other duties, act as teacher and, as such, have charge of the prison school and of the instruction of the prisoners, under rules from time to time established by the superintendent and approved by the prison commissioners.

Steward.
1883, 267, § 2.

SECTION 37. The superintendent may appoint a steward who shall hold his office at the pleasure of the superintendent, and shall receive such salary, not exceeding one thousand dollars a year, as the governor and council approve. He shall, as the agent of the superintendent, purchase for the prison such articles as the superintendent orders, and shall perform such other duties as the superintendent requires.

Watchman for Washakum pond.
1888, 370, § 3.
1896, 275.

SECTION 38. The superintendent may appoint a watchman to protect the waters of Washakum pond in the towns of Framingham and Ashland, and he shall have the powers of a district police officer.

Salaries.
1874, 385, § 8.
P. S. 221, § 47.
1884, 43, § 3.
1887, 341.
1888, 327.
1897, 329.

SECTION 39. The officers of the prison shall receive the following annual salaries: the superintendent, two thousand dollars; the deputy superintendent, one thousand dollars; the chaplain, one thousand dollars; the physician, one thousand dollars; the clerk, eight hundred dollars; each matron, four hundred dollars; each deputy matron, three hundred and fifty dollars; each assistant matron, three hundred dollars. No other perquisite, reward or emolument shall be allowed to or received by any of them, except that all said officers may reside at said prison or its dependencies at the public charge.

PRISON CONTRACTS.

Approval of bills.
1879, 294, § 18.
P. S. 221, § 54.
1883, 267, § 5.
1888, 337.
1889, 294.

SECTION 40. All bills contracted by the warden of the state prison, the superintendent of the Massachusetts reformatory or the superintendent of the reformatory prison for women for the maintenance of said institutions and the pay rolls of salaries of officers and employees thereof shall, before payment, be approved by a majority of the prison commissioners.

Contracts.
1813, 47, § 1.
1827, 118, § 3.
R. S. 144, § 19.
G. S. 179, § 32.
1879, 294, § 19.
P. S. 221, § 55.
1883, 267, § 5.
1888, 403, § 7.
11 Met. 138.
11 Cush. 510.

SECTION 41. All contracts on account of said prisons shall be made by the warden or superintendents, respectively, in writing, and, when approved in writing by the commissioners, shall be binding. The warden and superintendents, or their successors, may sue or be sued upon any contract made in accordance with the provisions of this chapter. No such suit shall abate by reason of said offices becoming vacant, but the successor of either of said officers, pending such suit, may, and upon motion of the adverse party and notice shall, prosecute or defend it.

Arbitration of controversies.
R. S. 144, § 20.

SECTION 42. The warden or superintendent may submit any controversy relative to a contract made by him or an action pend-

ing on such contract to the final determination of arbitrators or referees who shall be approved by the commissioners. 1883, 267, § 5. G. S. 179, § 33. 1879, 294, § 20. P. S. 221, § 56.

SECTION 43. If, in the opinion of the commissioners, it can be advantageously done, the principal articles purchased for the use of said prisons shall be contracted for by the year. The warden or superintendent, as the case may be, shall publish notice in at least two newspapers a sufficient time for the information of the public of the articles wanted, their quantity and quality, the time and manner of delivery and the period during which proposals therefor will be received. Contracts for supplies by the year. 1821, 108, §§ 3, 4. 1825, 89, § 6. 1827, 118, § 16. R. S. 144, § 21. G. S. 179, § 34. 1879, 294, § 21. P. S. 221, § 57. 1883, 267, § 6.

SECTION 44. Such proposals shall be in writing and sealed, and on the day appointed they shall be opened by the warden or superintendent in the presence of the commissioners, who shall cause them to be entered in a book and compared. The persons who offer the best terms, with satisfactory security for the performance, shall be entitled to the contract unless it appears to the commissioners that it is not for the interest of the commonwealth to accept any of the proposals. In such case, no offer shall be accepted, and the warden or superintendent, with the consent of the commissioners, may contract for any of the articles wanted in a way which shall be for the best interests of the commonwealth. Every contractor shall give bond in a reasonable sum, with satisfactory surety, for the performance of his contract. Proposals to be in writing, etc. 1821, 108, § 3. 1827, 118, § 16. R. S. 144, §§ 22, 23. G. S. 179, § 35. 1879, 294, § 22. P. S. 221, § 58. 1883, 267, § 5.

SECTION 45. The warden or superintendent shall, at the time supplies for the prison are delivered, take bills of the quantity and price thereof, which the clerk or such officer as the warden or superintendent directs shall compare with the articles delivered and, if they are correct, shall enter them with the date upon a book to be kept for the purpose. Bills of all services rendered for the prison shall be taken and entered in like manner. If a bill for supplies or services is incorrect, the clerk shall not enter it, but shall inform the warden or superintendent, that the error may be corrected. Bills to be taken of all purchases, services, etc. R. S. 144, § 24. G. S. 179, § 37. P. S. 221, § 24.

APPROPRIATIONS.

SECTION 46. An annual appropriation shall be made for the support of said prisons. The salaries and pay of officers and employees and all bills for supplies and other expenditures for said prisons shall be paid monthly from the treasury of the commonwealth, having first been certified by the auditor, upon schedules, enumerating the bills and pay rolls and accompanied by vouchers. The name and position of each officer, the amount of his pay and the amount due to him shall be on the pay roll, which, with the bills, shall be certified by the warden or by the superintendent, as the case may be. A record in full of the pay rolls and bills shall be made by the clerk in a book kept for the purpose at each prison and the originals shall be deposited with the auditor as vouchers. Annual appropriation. Salaries, etc., to be paid monthly. 1864, 303, §§ 2, 3. 1874, 385, §§ 23, 24. P. S. 221, §§ 59, 60. 1883, 267, § 5. 1884, 255, § 50. 1888, 403, § 7.

CHAPTER 224.

OF JAILS AND HOUSES OF CORRECTION.

SECTIONS 1-3. — Inspection of Prisons.

SECTIONS 4-7. — Jails.

SECTIONS 8-12. — Houses of Correction.

SECTIONS 13-15. — Houses of Reformation for Juvenile Offenders.

SECTIONS 16-27. — Provisions Relative to Jails, Houses of Correction and Prisoners.

SECTIONS 28-37. — Expense of Supporting Prisoners.

INSPECTION OF PRISONS.

Inspectors of
prisons;
duties.
1834, 151, § 15.
R. S. 143, §§ 28,
29.
1843, 61, § 2.
1845, 221.
G. S. 178, §§ 62,
64.
1864, 311, § 1.
P. S. 220, §§ 72,
73.

SECTION 1. The county commissioners shall be inspectors of the prisons in their counties. They shall twice in each year, at intervals not exceeding eight months, themselves or by a committee of two of their members, visit all the prisons in their county, and fully examine into everything relative to the government, discipline and police thereof, and as soon as may be after each inspection, the committee shall make and subscribe a detailed report to the commissioners of the condition of each prison as to health, cleanliness and discipline at the time of inspection, the number of prisoners confined there within the preceding six months or since the last inspection, the causes of confinement, the number of prisoners usually confined in one room, the distinction, if any, usually observed in the treatment of the different classes of prisoners, the punishments inflicted, any evils or defects in the construction, discipline or management of such prisons, the names of prisoners who have been discharged or pardoned or who have died or escaped; and any violation or neglect of law relative to such prisons, with the causes, if known, of the violation or neglect.

Access to
books, ac-
counts, etc.
R. S. 143, § 31.
G. S. 178, § 66.
P. S. 220, § 74.

SECTION 2. When the commissioners or any of them visit any of said prisons, for the purpose of inspection or otherwise, the sheriff, master, keeper or other officer who has charge thereof shall admit them, when required, into every apartment of such prison, exhibit all books, precepts, documents, accounts and papers relative to the affairs of the prison or to the detention or confinement of any person therein, which may be required, and afford to them such aid as may be requested in the performance of their duties. The commissioners or their committee may examine under oath, administered by one of them, either by interrogatories in writing to be answered in writing and subscribed, or otherwise as they may direct, any officer, keeper or other person relative to the affairs or management of any prison, and they may also converse with any of the prisoners apart, and without the presence of any officer or keeper.

Notice to dis-
trict attorney
of violation
of law.
R. S. 143, § 32.
G. S. 178, § 67.
P. S. 220, § 75.

SECTION 3. If it appears to the commissioners, from the report of their committee or otherwise, that any provision of law relative to prisons has been violated or neglected in their county, they shall forthwith give notice thereof to the district attorney.

JAILS.

1 SECTION 4. Jails shall be used for the detention, —

2 First, Of persons charged with crime and committed for trial.

3 Second, Of persons committed to secure their attendance as
4 witnesses upon the trial of criminal causes.

5 Third, Of persons committed pursuant to a sentence upon con-
6 viction of crime or for any cause authorized by law.

7 Fourth, Of persons detained or committed by the courts of the
8 United States.

Jails, pur-
poses of.
R. S. 143, § 1.
G. S. 178, § 1.
P. S. 220, § 1.
14 Gray, 241.
133 Mass. 400.

1 SECTION 5. If there are several jails in a county, the sheriff may
2 cause the prisoners to be confined in any of them.

R. S. 143, § 43.

G. S. 178, § 2.

P. S. 220, § 2.

Sheriff may
remove pris-
oners.

1 SECTION 6. If a prisoner escapes by reason of the insufficiency
2 of the jail, whereby the sheriff is made liable to a party at whose
3 suit the prisoner was committed, or to whose use any forfeiture was
4 adjudged against him, the county shall reimburse the amount
5 recovered by such party of the sheriff on account of the escape.

Reimburse-
ment of sheriff
for damages
for escape.
1700-1, 2, § 9.
1784, 41, § 1.
R. S. 14, § 12.
G. S. 178, § 4.
P. S. 220, § 5.

1 SECTION 7. The jailers of the county shall, at the opening of
2 each sitting of the superior court at which criminal business may
3 be transacted, return to the court a list of all prisoners in their
4 custody, specifying the causes for which, and the persons by whom,
5 they were committed, and produce and exhibit therewith, for the
6 inspection of the court, their calendars of prisoners, and return a
7 like list of the persons committed during the session of the court,
8 in order that the court may take cognizance and make deliverance
9 according to law of the prisoners committed for crimes within its
10 jurisdiction. Jailers who neglect to make such reports or to
11 exhibit their calendars shall be punished by a fine at the discretion
12 of the court.

Return of list
of prisoners
to court.
C. L. 128, § 2.
1700-1, 2, § 1.
1784, 41, § 5.
1836, 4, § 19.
G. S. 178, § 5.
P. S. 220, § 6.

HOUSES OF CORRECTION.

1 SECTION 8. The county commissioners in each county, except
2 Dukes County, shall, at the expense of the county, provide a house
3 or houses of correction, suitably and efficiently ventilated, with con-
4 venient yards, workshops and other suitable accommodations adjoin-
5 ing or appurtenant thereto, for the safe keeping, correction, gov-
6 ernment and employment of offenders who may be legally committed
7 thereto by the courts and magistrates of this commonwealth or of
8 the United States.

Houses of cor-
rection, how
provided, etc.
C. L. 127, § 2.
1699-1700, § 1.
1787, 54, § 1.
1818, 123, § 5.
1834, 153, § 1.
R. S. 14, § 9;
143, § 2.
1848, 324, § 2.
1854, 448, § 23.
G. S. 178, § 6.

P. S. 220, § 7.

1885, 266, § 6.

101 Mass. 24.

116 Mass. 194.

1 SECTION 9. The yards shall be of sufficient extent for the
2 convenient employment of the persons confined therein, and shall
3 be enclosed by fences of sufficient height and strength to prevent
4 escapes and to prevent all persons who are without from access to
5 or communication with any person confined therein. If such
6 house of correction is not provided, the jail or a part thereof may
7 be used for that purpose; but if so used, it shall be provided with
8 a sufficient yard, so enclosed.

Enclosed
yards.
1834, 151, § 1.
R. S. 143, § 3.
G. S. 178, § 7.
P. S. 220, § 8.

Sentence to house of correction in a county.

SECTION 10. The sentence of prisoners to a house of correction shall be executed in any house of correction in the county. 1 2

1859, 249, § 7. G. S. 178, § 8. 1860, 164, § 1. 1862, 127, § 1. P. S. 220, § 10.

County commissioners, etc., to enforce rules, inspect accounts, etc. 1834, 151, § 6. R. S. 143, § 11. 1857, 35. G. S. 178, § 12. 1877, 147. P. S. 220, § 12.

SECTION 11. The county commissioners of the several counties and the penal institutions commissioner of the city of Boston shall cause the rules which are established for the management of the house of correction and for the government of the prisoners therein to be strictly observed, shall examine all accounts of the master relative to the expenses of the institution and shall keep a record of their official proceedings relative thereto. 1 2 3 4 5 6 7

Sheriff to report to court number of employed. 1875, 83. P. S. 220, § 16.

SECTION 12. The sheriff shall report to the superior court, at each sitting at which criminal business may be transacted, the number of prisoners sentenced to labor in houses of correction in the county who are employed and also the number who are not employed, with the reasons why they are not employed. 1 2 3 4 5

HOUSES OF REFORMATION FOR JUVENILE OFFENDERS.

Houses of reformation for offenders under age of sixteen years. 1865, 208, § 2. P. S. 220, § 18.

SECTION 13. County commissioners may, in their discretion, and at the expense of the county, establish houses of reformation, to which offenders under the age of sixteen years may be sentenced for offences which are punishable with imprisonment or for the non-payment of fine. 1 2 3 4 5

— how to be governed. Discharges. 1825, 182, § 5. 1857, 35, § 1. 1865, 208, § 4. 1879, 64, § 1. P. S. 220, §§ 20, 21. 1889, 245. 1895, 449, § 16. 1897, 395, § 3.

SECTION 14. They shall make regulations for the government and control of such houses of reformation, and for the appointment of teachers and officers thereof, and may at any time discharge any person who is sentenced thereto. In the county of Suffolk, the trustees for children shall, subject to the approval of a justice of the court which imposed the sentence, have like authority to discharge persons from the house of employment and reformation for juvenile offenders which is established in the city of Boston, and may, subject to like approval, remit the punishment of and place upon probation any person who may have been committed to said house of employment and reformation, upon such conditions as they consider proper. 1 2 3 4 5 6 7 8 9 10 11 12

Arrest on violation of conditions. 1879, 64, § 2. P. S. 220, § 22. 1897, 395, § 3.

SECTION 15. If any person whose punishment has been remitted and who is placed upon probation as provided by the preceding section, in the opinion of said trustees for children, violates any of the conditions of such remission or probation, said trustees may at any time, without further warrant or authority, cause him to be arrested, and to be remanded and confined for the unexpired term of his sentence. 1 2 3 4 5 6 7

PROVISIONS RELATIVE TO JAILS, HOUSES OF CORRECTION AND PRISONERS.

Sheriff to have custody of jail, etc. 1859, 249, § 1. G. S. 178, § 19. 1865, 241. P. S. 220, § 23. 161 Mass. 391.

SECTION 16. The sheriff shall have the custody and control of the jails in his county and, except in the county of Suffolk, of the houses of correction therein, and of all prisoners who may be committed thereto, and shall keep the same himself or by his deputy 1 2 3 4

5 as jailer, master or keeper and shall be responsible for them. The
6 jailer, master or keeper shall appoint subordinate assistants, em-
7 ployees and officers, and shall be responsible for them. In the
8 county of Suffolk, the penal institutions commissioner shall appoint
9 a master of the house of correction, who shall hold office during the
10 pleasure of said commissioner.

1 SECTION 17. The sheriff shall receive such compensation from
2 the county, not less than twenty dollars a year, for the safe keeping
3 of the prisoners who may be committed to his custody, as the
4 county commissioners, or, in the county of Suffolk, the mayor and
5 aldermen, determine. He shall not receive any rent or emolu-
6 ment from the jailers and keepers of the houses of correction for
7 the use and occupation of the dwelling houses which are provided
8 for them by the county.

Compensation
of sheriff for
care of prison-
ers, etc.
1830, 110, § 6.
R. S. 14, § 92.
G. S. 178, § 21.
P. S. 220, § 25.
163 Mass. 34.

1 SECTION 18. The county commissioners shall establish fixed
2 salaries for all officers, assistants and employees of jails and houses
3 of correction, which shall be in full compensation for all their
4 services, and for which they shall devote their whole time, not ex-
5 ceeding the time limited by the provisions of section twenty, to
6 the performance of their duties, unless released therefrom by the
7 commissioners.

— of officers,
assistants, etc.
1850, 249, § 2.
G. S. 178, § 22.
1864, 270, § 1.
P. S. 220, § 26.
163 Mass. 34.

1 SECTION 19. A sheriff, master, keeper or jailer who considers
2 any such salary inadequate may present his petition to the superior
3 court, which, after notice to the chairman of the county commis-
4 sioners and a hearing, shall fix the salary and pass any appropriate
5 order.

Inadequate
compensation,
how deter-
mined.
1830, 249, § 3.
G. S. 178, § 23.
P. S. 220, § 27.
145 Mass. 300.

1 SECTION 20. The hours of labor for employees of county jails
2 and houses of correction shall not exceed sixty in each week. A
3 county officer who violates the provisions of this section by requir-
4 ing an employee to work more than sixty hours in a week shall be
5 punished by a fine of not less than twenty-five nor more than fifty
6 dollars for each offence.

Hours of labor.
1900, 425.

1 SECTION 21. The keeper of a jail, master of a house of correc-
2 tion or superintendent of a workhouse to which a female has been
3 committed shall forthwith transmit to the secretary of the prison
4 commissioners such an abstract of the mittimus upon which she has
5 been committed as said commissioners may require.

Abstract of
mittimus com-
mitting female
to be sent to
prison com-
missioners.
1879, 204, § 26.
P. S. 220, § 30.

1 SECTION 22. If a prisoner dies in the jail or house of correction,
2 the sheriff or keeper shall deliver the body to his relations or friends
3 if they request it: otherwise, he shall bury it in the common
4 burying ground and the expense thereof shall be paid by the city
5 or town in which the deceased had a legal settlement, if any;
6 otherwise, by the county.

Burial of de-
ceased pris-
oner.
1811, 102, § 1.
R. S. 14, § 87.
G. S. 178, § 28.
P. S. 220, § 31.

1 SECTION 23. Upon the expiration of the term of office of a
2 sheriff, or upon his resignation or removal from office, he shall de-
3 liver to his successor all the prisoners who are in his custody, but
4 he shall retain the keeping of the jails and houses of correction and

Sheriff to de-
liver prisoners
to successor.
1783, 41, § 4.
R. S. 14, § 84.
G. S. 178, § 27.
P. S. 220, § 32.

of the prisoners therein under his care until his successor has been elected or appointed and qualified. 5 6

Upon death of sheriff, jailer to continue in office until, etc. 1898, 46, § 1. R. S. 14, § 86. G. S. 178, § 28. P. S. 220, § 33.

SECTION 24. Upon the death of a sheriff, the jailer, master or keeper appointed by him shall continue in office and retain the custody and control of the jail or house of correction and of all prisoners therein until a successor to the deceased sheriff has been appointed or elected and qualified, or until the governor, with the advice and consent of the council, removes him and appoints another. The jailer, master or keeper appointed by the governor shall give bond with sureties as the governor directs and approves for the faithful performance of the duties of his office. 1 2 3 4 5 6 7 8 9

Care of jail, etc. 1817, 149, § 1. 1834, 151, § 11. R. S. 143, § 38. G. S. 178, § 31. P. S. 220, § 36. 1886, 226.

SECTION 25. The keeper of each jail and the master of each house of correction shall, at the expense of the county, cause it to be constantly kept in as cleanly and healthful a condition as may be. No permanent vault shall be used in any apartment. Every room occupied by a prisoner shall be furnished with a suitable bucket, with a cover made to shut tight, for the necessary accommodation of such prisoner, and such bucket, when used, shall be emptied daily and shall be constantly kept in good order. 1 2 3 4 5 6 7 8

Removal of prisoners in case of pestilence. R. S. 143, § 41. G. S. 178, § 48. P. S. 220, § 51.

SECTION 26. If disease breaks out in a jail or other prison, which, in the opinion of the inspectors of the prison, may endanger the lives or health of the prisoners to such a degree as to render their removal necessary, the inspectors may designate in writing a suitable place within the same county, or any prison in a contiguous county, as a place of confinement for such prisoners. Such designation, having been filed with the clerk of the superior court, shall be a sufficient authority for the sheriff, jailer, master or keeper to remove all the prisoners who are in his custody to the place designated and there to confine them until they can be safely returned to the place whence they were removed. Any place to which the prisoners are so removed shall, during their imprisonment therein, be deemed a prison of the county in which they were originally confined, but they shall be under the care, government and direction of the officers of the county in which they are confined. 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15

— In case of danger from fire. R. S. 143, § 42. G. S. 178, § 49. P. S. 220, § 52.

SECTION 27. If a jail or other prison or any building near thereto is on fire and the prisoners are exposed to danger thereby, the sheriff, jailer or other person who has charge of the prison may remove them to a safe place, and there confine them as long as may be necessary to avoid the danger, and such removal and confinement shall not be deemed an escape of the prisoners. 1 2 3 4 5 6

EXPENSE OF SUPPORTING PRISONERS.

County commissioners to procure supplies. 1859, 249, § 4. G. S. 178, § 50. P. S. 220, § 53.

SECTION 28. The county commissioners shall, except in the county of Suffolk, without extra charge or commission to themselves or to any other person, procure or cause to be procured all necessary supplies for the jails and houses of correction, to be purchased and provided under their direction and at the expense of the county. 1 2 3 4 5 6

1 SECTION 29. The expense of keeping and maintaining convicts
 2 sentenced to imprisonment in the jail or house of correction, of
 3 the keeping of persons charged with or convicted of crime and
 4 committed for trial or sentence, and of prisoners committed on
 5 mesne process or execution, so long as the fees for their board are
 6 paid by the defendant or debtor, plaintiff or creditor, shall be paid
 7 by the county after the accounts of the keeper or master have been
 8 settled and allowed by the county commissioners, or, in the county
 9 of Suffolk, by the auditor of the city of Boston; and no allowance
 10 therefor shall be made by the commonwealth.

Expense of
 supporting
 convicts.
 1819, 163.
 1826, 142, § 1.
 1834, 151, § 18.
 R. S. 143, § 27.
 1839, 156.
 G. S. 178, § 51.
 P. S. 220, § 54.
 1885, 266, § 6.
 S. Met. 513.

1 SECTION 30. The county commissioners and the mayor of the
 2 city of Boston may order such amounts of money as may from time
 3 to time be necessary to be advanced from the treasuries of their
 4 counties or city to the master of the house of correction or keeper
 5 of the jail, for the purpose of providing such tools, materials and
 6 other things as may be required for the government, restraint and
 7 safe keeping of the convicts. Such amounts shall be expended by
 8 him under the direction of the officers who order the advancement
 9 and shall be accounted for by him to them.

Advances for
 expenses.
 1834, 151, § 18.
 R. S. 143, §§ 23,
 24.
 1839, 146, § 1.
 1854, 448, § 33.
 G. S. 178, § 52.
 P. S. 220, § 55.

1 SECTION 31. The keeper of the jail and the masters of the
 2 houses of correction in the county of Suffolk shall, at the expense
 3 of the county, provide necessary fuel, bedding and clothing for all
 4 prisoners in their custody upon charge or conviction of crime against
 5 the commonwealth, and shall present to the auditor of the city of
 6 Boston a full account of their charges so incurred, or incurred for
 7 necessary furniture for said institutions, which, upon the allowance
 8 thereof by the auditor, shall be paid by the county.

Clothing, bed-
 ding and fuel.
 1834, 151, § 12.
 R. S. 143, § 44.
 G. S. 178, § 54.
 P. S. 220, § 57.

1 SECTION 32. If the commissioners, or, if the mayor of the city
 2 of Boston, direct specific rations or articles of food, soap, fuel or
 3 other necessities to be furnished to the prisoners, the keeper or
 4 master shall conform to such direction; and if he refuses or neglects
 5 to furnish the same, he shall be subject for a first and second offence
 6 to the penalties prescribed by section twenty of chapter two hun-
 7 dred and ten for the offences therein mentioned.

Keeper to obey
 orders for fur-
 nishing specific
 rations.
 1834, 151, § 20.
 R. S. 143, § 45.
 1854, 448, § 33.
 G. S. 178, § 55.
 P. S. 220, § 58.

1 SECTION 33. The penal institutions commissioner in the city of
 2 Boston shall from time to time determine what amount the master
 3 of the house of correction for the county of Suffolk shall receive
 4 for the board of the persons committed to his custody, and the city
 5 council of the city of Boston shall determine what further compen-
 6 sation, in addition to such board, he shall receive for his services.

Compensation
 of master of
 house of
 correction in
 Suffolk.
 1834, 151, § 9.
 R. S. 143, § 14.
 1857, 35.
 G. S. 178, § 56.
 P. S. 220, § 59.

1 SECTION 34. The county commissioners, and, in the county of
 2 Suffolk, the auditor, shall twice in each year, and oftener if neces-
 3 sary, examine and audit the accounts for the care and expense of
 4 supporting and employing the persons committed to the houses of
 5 correction in their county, and certify what amount is due for sup-
 6 porting and employing each person after deducting the net profit of
 7 his labor. If such person refuses or neglects, for fourteen days
 8 after demand in writing by the master or keeper, to pay the amount
 9 so certified to be due, the commissioners or auditor may recover it

Audit of ac-
 counts for
 support of
 convicts, etc.
 1834, 151, § 10.
 R. S. 143, § 15.
 1857, 35.
 G. S. 178, § 57.
 P. S. 220, § 60.

in an action of contract in the name of their county, or, in the 10
county of Suffolk, in the name of the city of Boston. 11

Recovery of
support of
poor convicts.
1699-1700, § 5.
1787, 54, § 4.
1826, 142, § 1.
1834, 151, § 10.
R. S. 143, § 16.
1839, 146, § 2.
1843, 66, §§ 2, 3.
G. S. 178, § 58.
1876, 148.
P. S. 220, § 61.
18 Pick. 470.
4 Met. 278.
5 Met. 54.

SECTION 35. If such person has not sufficient property to pay the 1
amount so certified, it may be recovered of any parent, master or 2
kindred liable by law to maintain him. If he has been committed 3
for an offence described in section thirty of chapter two hundred 4
and eight or section forty-six of chapter two hundred and twelve, 5
an amount not exceeding one dollar a week may be recovered of 6
the city or town in which he has his lawful settlement; and any 7
city or town which pays such amount may recover it of any parent, 8
master or kindred liable by law to maintain him. 146 Mass. 134. 9

Action there-
for.
R. S. 143, § 16.
1846, 154, § 1.
G. S. 178, § 59.
P. S. 220, § 62.
20 Pick. 112.
22 Pick. 211.

SECTION 36. Upon the refusal or neglect to make payment for 1
thirty days after demand in writing of the parent, master or kin- 2
dred, or of any member of the city council of the city, or of any 3
overseer of the poor of the town, respectively liable by law therefor, 4
the county, or in the county of Suffolk, the city of Boston, may, 5
within two years after the amount has been so certified, recover it 6
in an action of contract against the party so liable. 7

Notice to town
liable for
support.
1843, 66, § 1.
G. S. 178, § 60.
P. S. 220, § 63.
109 Mass. 162.

SECTION 37. When a person for whose support a city or town 1
is liable under the provisions of section thirty-five is committed, 2
the master or keeper shall forthwith give notice thereof in writing, 3
by mail or otherwise, to the mayor and aldermen or selectmen of 4
such city or town. 5

CHAPTER 225.

OF THE OFFICERS AND INMATES OF PENAL AND REFORMATORY INSTITU- TIONS, AND OF PARDONS.

SECTIONS 1-14. — Officers.

SECTIONS 15-131. — Prisoners.

SECTIONS 132-135. — Pardons.

SECTIONS 136-142. — Aid to Discharged Prisoners.

OFFICERS.

Record of com-
mitments, etc.
1874, 264, § 1;
385, § 19.
P. S. 219, § 31.

SECTION 1. The warden of the state prison, the superintendent 1
of the Massachusetts reformatory and of the reformatory prison for 2
women, respectively, and the masters and keepers of jails, houses 3
of correction and of all other penal or reformatory institutions 4
shall keep full and accurate records of all prisoners who may be 5
committed thereto, maintained therein or discharged therefrom. 6

— of property
in possession
of prisoners.
1861, 138.
P. S. 222, § 1.

SECTION 2. They shall keep a record of all money or other 1
property which is found in the possession of prisoners who are com- 2
mitted to such institutions; and shall be responsible to the com- 3
monwealth for the safe keeping and delivery of said property to said 4
prisoners or their order upon or at any time before their discharge 5
from prison. 6

1 SECTION 3. They shall keep a record of the name and number
 2 or other sufficient designation of every person punished by solitary
 3 imprisonment, the day and hour when he was placed in solitary
 4 imprisonment, the day and hour when released, the offence and such
 5 remarks as may be necessary to complete the record. The prison
 6 commissioners shall ascertain whether the requirements of this
 7 section are observed.

Record
 of solitary
 imprisonment.
 1876, 61, §§ 2, 3.
 P. S. 222, §§ 4, 5.

1 SECTION 4. The jailer, keeper or master of each jail and house
 2 of correction shall keep in a bound book an exact calendar of all
 3 prisoners committed thereto, in which shall be recorded the names
 4 of all prisoners, their places of abode and additions, the time,
 5 cause and authority of their commitment, and, if they have been
 6 committed upon a sentence on conviction of crime, a description of
 7 their persons, and such facts as, with the entries in the prison book,
 8 will enable the sheriff or penal institutions commissioner of the
 9 city of Boston to make the reports to the prison commissioners
 10 which are required by law. He shall record in the same book the
 11 time and authority for the release of every prisoner who is released
 12 and the time and manner of the escape of a prisoner who escapes.
 13 A jailer, master or keeper who neglects to keep such calendar or to
 14 enter such facts therein shall forfeit one hundred dollars, which shall
 15 be recovered by the county commissioners in the name of the county,
 16 or, in the county of Suffolk, by the penal institutions commissioner
 17 in the name of the city of Boston, and shall be expended by them
 18 or him for the relief of discharged prisoners.

Calendar of
 prisoners in
 jail, etc.
 1784, 41, § 4.
 R. S. 14, § 83.
 1859, 139, § 5.
 G. S. 178, § 24.
 P. S. 220, § 28.
 6 Allen, 477.

1 SECTION 5. All process to be served within the precincts of any
 2 penal or reformatory institution shall be directed to and served by
 3 the warden, superintendent, master or keeper thereof or his deputy.

Service of
 process in
 prisons.
 1811, 32, § 3.
 1827, 118, § 3.

R. S. 144, § 25.

G. S. 179, § 3.

P. S. 221, § 3.

1 SECTION 6. All warrants, mittimus, processes and other of-
 2 ficial papers by which a prisoner is committed or released, or attested
 3 copies thereof, shall contain a detailed statement of the fees of the
 4 officer for making the commitment, shall be regularly filed in chron-
 5 ological order and shall be safely kept with the calendar in a suita-
 6 ble box for that purpose. Upon the expiration of the sheriff's
 7 commission, his death, resignation or removal from office, it shall be
 8 delivered to his successor: and in default thereof, the sheriff or his
 9 executor or administrator shall forfeit two hundred dollars.

Filing of war-
 rants, etc.
 1784, 41, § 6.
 R. S. 14, § 85.
 G. S. 178, § 25.
 P. S. 220, § 29.
 1890, 328, § 1.

1 SECTION 7. Each jailer and master of a house of correction shall
 2 have a prison book, in which he shall keep an account of the value
 3 of the labor of the prisoners, of the salaries of officers and of arti-
 4 cles furnished for the support of the prisoners, the quantity of such
 5 articles, of whom bought and the price paid, classified as follows:
 6 cost of provisions, including the portion consumed by the family of
 7 the jailer or master; cost of clothing; cost of beds and bedding;
 8 cost of medicines; cost of medical attendance; cost of religious or
 9 secular instruction; cost of fuel; cost of light; allowance to dis-
 10 charged prisoners; allowance to witnesses in money or clothing.
 11 The prison book, verified by the oath of the jailer or master, shall
 12 be exhibited to the commissioners when his accounts are presented

Prison book,
 etc.
 1699-1700, 8, § 7.
 1818, 123, § 3.
 1848, 276, § 2.
 1859, 139, § 5.
 G. S. 178, § 61.
 P. S. 220, § 65.
 13 Gray, 439.

for examination, and at other times when demanded. A jailer or master who neglects to keep such book or to enter therein such facts, or who wilfully makes any false entry therein, shall forfeit one hundred dollars, which shall be recovered by the county commissioners in the name of the county, or, in the county of Suffolk, by the penal institutions commissioner in the name of the city of Boston, and shall be expended by them or him for the relief of discharged prisoners.

Invoice books.
1890, 296.

SECTION 8. The master, keeper, superintendent or other officer who has charge of a jail, house of correction, truant school or other county public institution shall keep an invoice book, in which shall be entered, on the day of receipt, all bills for supplies for the maintenance of such institution. Such books shall be as nearly uniform as the character of the institutions will admit and shall be kept posted up to date so that the footings shall at any time show the then actual facts relating to such supplies. Such books shall be county property and shall remain among the records of the institutions to which they belong.

Annual
reports.
1840, 15, § 2.
1857, 40, 290.
1858, 46.
1859, 139, §§ 1-3.
G. S. 178, §§ 69-71.
1864, 307, §§ 2-4.
1870, 370, § 9.
1872, 24.
1874, 264, §§ 2, 3;
385, § 22.
1877, 120.
1879, 294, § 33.
1881, 66.
P. S. 219, §§ 32,
33, 38.
1884, 255, §§ 24,
31.

SECTION 9. The warden of the state prison, the superintendent of the Massachusetts reformatory and of the reformatory prison for women, respectively, sheriffs, county commissioners and the penal institutions commissioner of the city of Boston shall annually, on or before the fifteenth day of October, make a report to the prison commissioners of the salaries of prison officers, of the number and cost of support of prisoners, and of such other details relative to the management and discipline of the several prisons as the commissioners may from time to time prescribe. The warden of the state prison and the superintendent of the Massachusetts reformatory and of the reformatory prison for women, respectively, shall also include in their reports the amount of liabilities and outstanding claims of said institutions, the names of their debtors and creditors, the amounts due to or from each and when they are payable; detailed accounts of expenditures for the prisons for the year ending on the preceding thirtieth day of September; the cost of all changes made in the buildings thereof; the names, position, pay and allowances of every officer or employee thereof; the average cost of the support of each prisoner; the number of volumes in the library of each prison; and such other facts relative to said prisons as the commissioners consider proper. An officer who refuses or neglects to make such report at the time prescribed or who withholds it after said date shall forfeit one dollar for each day's neglect, which shall be deducted from his salary or compensation at the first monthly payment after his default has been reported to the proper auditing or disbursing officer.

Transfer of
watchmen.
1894, 349.

SECTION 10. An officer in a jail or house of correction may be transferred to the state prison or the Massachusetts reformatory as a watchman; and if the place in which he is employed is not in the classified list prepared by the civil service commissioners, they shall give him a non-competitive examination as to his fitness, upon receipt from the warden of the state prison or the superintendent of the Massachusetts reformatory of a statement that the appoint-

8 ment of such officer is desired and that he possesses particular
9 qualifications for the work which will be required of him.

1 SECTION 11. An officer of the state prison who holds his place at
2 the pleasure of the warden, or of the warden and commissioners, or
3 an officer or employee of the Massachusetts reformatory or reforma- Removal of
incompetent
officers of
prison.
1827, 118, § 7.
R. S. 144, § 11.
1858, 162, § 1.
G. S. 179, § 18.
1879, 294, § 16.
P. S. 219, § 21.
1890, 267.
1901, 364, § 3.
4 tory prison for women who holds his place at the pleasure of the
5 superintendent, or of the superintendent and commissioners, who is
6 unfaithful or incompetent, or who uses intoxicating liquor as a
7 beverage, shall be by them forthwith removed. If the warden or
8 superintendent and the commissioners do not concur as to the ex-
9 pediency of a removal which requires their concurrence, the question
10 may be referred to the governor and council, who may make such
11 removal.

1 SECTION 12. The jailer, master or keeper of a jail or house of — of jails
and houses of
correction.
1859, 249, § 8.
G. S. 178, § 20.
P. S. 220, § 24.
2 correction, except in the county of Suffolk, may be removed by the
3 superior court for neglect of duty or for wasteful or extravagant
4 use of supplies, upon complaint of the county commissioners, after
5 notice to the sheriff and the person complained of and a hearing.

1 SECTION 13. The sheriffs of the several counties and the penal Officer using
intoxicating
liquor to be
removed.
1858, 162, § 2.
G. S. 178, § 45.
P. S. 220, § 49.
1882, 6, § 4.
2 institutions commissioner of the city of Boston shall forthwith re-
3 move any officer who has been appointed by them, respectively, to
4 any position of trust or authority in a jail or house of correction
5 and who is known to use intoxicating liquor as a beverage.

1 SECTION 14. The authorities of the state of Vermont shall have Transportation
of prisoners of
Vermont.
1892, 423.
2 the same power and authority to detain and transport through this
3 commonwealth persons who have been convicted of crime in Ver-
4 mont and sentenced to imprisonment in a penal institution therein
5 as they have to detain and transport them in said state.

PRISONERS.

Classification, Registration and Identification.

1 SECTION 15. The prison commissioners may, with the approval Classification
in prisons.
1884, 255, § 28.
1891, 372, § 1.
1892, 267, § 1.
2 of the governor and council, provide for grading and classifying
3 the prisoners in the state prison and in the Massachusetts reform-
4 atory and may establish rules for dealing with the prisoners in the
5 state prison according to their conduct and industry and with the
6 prisoners in the Massachusetts reformatory according to their con-
7 duct, industry in labor and diligence in study.

1 SECTION 16. They shall, as far as practicable, so classify prison- — in jails
and houses
of correction.
1862, 127, § 1.
1870, 370, § 2.
1879, 294, § 3.
P. S. 219, § 4;
220, § 10.
1895, 259.
2 ers who have been sentenced and committed to the jails and houses
3 of correction, with reference to their sex, age, character, condition
4 and offences, as to promote their reformation and safe custody and
5 the economy of their support, and to secure the separation of male
6 and female prisoners. Sheriffs may classify prisoners in houses of
7 correction, subject to the revision of the prison commissioners.
8 The master or keeper of a jail or house of correction shall ascer-
9 tain whether a prisoner committed thereto upon a sentence of six
10 months or more is able to read or write.

Classification
in jails and
houses of cor-
rection.

1817, 149, § 2.
1834, 151, § 19.
R. S. 143, § 35.
G. S. 178, § 33.
P. S. 220, § 38.

SECTION 17. Male and female prisoners shall not be put or kept in the same room in a jail or house of correction; nor, unless the crowded state of the institution so requires, shall any two prisoners, other than debtors, be allowed to occupy the same room, except for work. Persons committed for debt shall be kept separate from convicts and from persons who are confined upon a charge of an infamous crime. Conversation between prisoners in different apartments shall be prevented. Minors shall be kept separate from notorious offenders and from persons who have been convicted of an infamous crime. Persons committed on charge of crime shall not be confined with convicts, and prisoners charged with or convicted of a crime not infamous shall not be confined with those charged with or convicted of an infamous crime, except while at labor or assembled for moral or religious instruction, at which time no communication shall be allowed between prisoners of different classes.

Registration of
prisoners.

1890, 316, § 1.
1900, 260, § 1.
[1 Op. A. G.
27.]

SECTION 18. Prisoners in the state prison, in the Massachusetts reformatory or reformatory prison for women who have been convicted of a felony, and prisoners in a jail or house of correction upon a sentence of not less than three years for felony, shall be measured and described, in accordance with the Bertillon method for the identification of criminals, by persons in the service of the commonwealth who may be appointed by the prison commissioners for that purpose.

District attor-
ney to furnish
criminal his-
tory.

1890, 316, § 3.
1900, 260, § 1.

SECTION 19. The district attorney who prosecuted such prisoners as are described in the preceding section shall forward to the officer in charge of the prison to which he is sentenced the criminal history of each prisoner as shown upon the trial, upon blanks which shall be furnished by the prison commissioners.

Record of
measurements.

1890, 316, § 2.
1900, 260, § 2.
[1 Op. A. G.
27.]

SECTION 20. The warden of the state prison, the superintendent of the Massachusetts reformatory and of the reformatory prison for women, respectively, and the keepers of jails and houses of correction shall keep a record of such measurements and descriptions and of the criminal history of prisoners so measured and described as shown by the records of the courts of this commonwealth or of any other state or by any other official records which are accessible, and shall attach to the record, or file in such manner as to be readily found, a photograph or photographs of such prisoner.

Publication of
records.

1890, 316, § 4.
1900, 260, § 1.

SECTION 21. The record required by the preceding section shall not be published except as far as may be necessary for the identification of persons who are convicted of felony after their release from prison; but the officer in charge of a prison shall exhibit the record to any person upon the order of a justice of the superior court or of a district attorney. A copy of the measurements, descriptions, photographs and histories shall, upon request, be furnished by the officer in charge of any prison to the principal officer of a prison in any other state which requires by law the measurement and description of convicts and which has provided for furnishing information concerning criminals to other states, and to the chief executive officer of the police force of any city or town in the

13 commonwealth which has in use the said Bertillon method, if such
14 city or town pays for the expense thereof.

1 SECTION 22. No compensation shall be allowed to an officer for
2 the performance of any services required by the provisions of the
3 four preceding sections, but he shall be reimbursed by the com-
4 monwealth for his actual travelling expenses incurred in the per-
5 formance of any duties therein required.

No compensa-
tion to officers.
1890, 316, § 5.
1900, 260, § 1.

1 SECTION 23. The prison commissioners may send or cause to
2 be sent to any national bureau of identification which may be estab-
3 lished for the purpose of exchanging information according to the
4 method of identification by the Bertillon method, the measurements
5 and descriptions of all prisoners in this commonwealth who may
6 be measured thereunder.

Descriptions
furnished to
national
bureau.
1892, 313, § 2.

Discipline and Treatment.

1 SECTION 24. The warden and officers of the state prison shall
2 treat the prisoners with kindness so long as they merit such treat-
3 ment by their obedience, industry and good conduct.

Treatment of
prisoners.
R. S. 144, § 52.
G. S. 179, § 38.
P. S. 221, § 25.

1 SECTION 25. The warden shall cause all necessary means to be
2 used to maintain order in the state prison, enforce obedience, sup-
3 press insurrection and prevent escapes, and for that purpose he may
4 at all times require the aid and utmost exertions of all the officers
5 of the prison except the chaplain and physician.

Warden to
maintain
order.
1827, 118, §§ 3,
21.
R. S. 144, § 48.
G. S. 179, § 39.
P. S. 221, § 26.

1 SECTION 26. Prisoners in the state prison shall be constantly
2 employed for the benefit of the commonwealth, but no prisoner shall
3 be employed in engraving. G. S. 179, § 40. P. S. 221, § 27. 1888, 189.

Prisoners, how
employed.
1827, 118, § 13.
R. S. 144, § 33.
1850, 289, § 4.

1 SECTION 27. No communication between the prisoners in the
2 state prison and any person without the prison shall be allowed.
3 The prisoners shall be confined in separate cells in the night time,
4 and all intercourse between them in the day time shall, as far as
5 is practicable, be prevented: but the warden may, at such times and
6 under such circumstances as he considers expedient, with the con-
7 sent of the commissioners, allow them to assemble together in the
8 yard for recreation and exercise.

Separation of
prisoners.
1827, 118, § 13.
R. S. 144, § 33.
G. S. 179, § 44.
1869, 275.
P. S. 221, § 31.

1 SECTION 28. Prisoners in the state prison and in the reformatory
2 prison for women may be employed, in the custody of an officer, on
3 any part of the premises of the prison, and whoever escapes from
4 said premises shall be deemed to have escaped from state prison.
5 Prisoners in the Massachusetts reformatory may be employed, in the
6 custody of an officer, upon any land or building which is owned by
7 the commonwealth, and whoever escapes from said land or building
8 shall be deemed to have escaped from said reformatory.

Employment
on land ap-
partenant to
prison.
1884, 255, § 32.
1885, 34, § 1.
1898, 307.
1901, 106.

1 SECTION 29. Prisoners who are serving sentence in any institu-
2 tion named in section forty-three shall not be employed outside the
3 precincts of such institution in any mechanical or skilled labor for
4 private parties.

Outside labor
for private
parties forbid-
den.
1891, 209.

Ventilation of
prison, and
baths.

Food, clothing
and bedding.

1817, 149, § 1.

1827, 118, §§ 14,

15.

1829, 16, § 2;

114, § 1.

1833, 67, § 3.

1834, 145, § 2;

151, § 11.

R. S. 143, § 39;

144, §§ 44, 45, 47.

1848, 324, §§ 1, 2.

1850, 101.

G. S. 178, § 32;

179, §§ 59, 61, 62.

1879, 294, § 12.

P. S. 219, § 16;

220, § 37; 221,

§ 32.

SECTION 30. All penal institutions shall be suitably and sufficiently ventilated. The food, clothes, beds and bedding therein shall be of good quality and of sufficient quantity for the sustenance and comfort of the prisoners, and the bedding shall include mattresses, blankets and pillows. The warden of the state prison, the superintendent of the Massachusetts reformatory and of the reformatory prison for women, respectively, and the keepers and masters of jails and houses of correction shall see that strict attention is constantly given to the personal cleanliness of all prisoners in their custody. They shall, once at least in each week, cause the shirt of each prisoner to be washed, each male prisoner to be shaved, and each prisoner to have a bath of cold or tepid water applied to the whole surface of the body if such bath would not, by reason of illness, be hurtful or dangerous. Each prisoner shall be provided daily with as much clean water as he needs for drink or for the purpose of personal cleanliness, and with a clean towel once a week. Clothes shall not be washed or hung out wet in any room which is occupied by a prisoner during the night. All prisoners who are not in solitary confinement shall be served three times each day with a sufficient quantity of wholesome food, well cooked and in good order.

Visitors to
state prison.

1854, 302, § 1.

G. S. 179, § 48.

P. S. 221, § 33.

SECTION 31. No person, except the governor and council, members of the general court, officers of justice or other persons who have business at the prison, shall be allowed to visit it without a permit from one of the commissioners or from the warden.

Register of
visitors.

1854, 302, §§ 2, 3.

G. S. 179, §§ 49,

50.

1879, 294, § 34.

P. S. 221, §§ 34,

35.

SECTION 32. The warden shall cause a register to be kept of the names and residences of all visitors and of the authority by which they visit, which shall always be open to the commissioners. He may refuse admission to a person who has a permit, if such admission would be injurious to the best interests of the prison, but he shall forthwith report such refusal to the commissioners.

Punishment.

Gag forbidden.

1879, 181.

P. S. 222, § 6.

SECTION 33. Punishment by the use of the gag shall not be allowed in any penal or charitable institution. An officer of any such institution who uses a gag as a punishment shall be punished by a fine of not more than fifty dollars.

Solitary labor.

1850, 289, § 1.

G. S. 179, § 41.

1879, 294, § 34.

P. S. 221, § 28.

SECTION 34. The warden of the state prison, with the consent of one or more of the commissioners, may, for such time as they consider necessary to produce penitence, or to promote good order and discipline, confine obstinate and refractory prisoners to solitary labor.

Solitary
imprisonment.

1827, 118, § 18.

R. S. 144, § 32.

G. S. 179, § 42.

P. S. 221, § 29.

SECTION 35. A prisoner in the state prison who is sentenced to solitary imprisonment or who is subjected thereto for a violation of the rules and regulations of the prison shall be confined in a solitary cell and be fed with bread and water only, unless the physician of the prison certifies to the warden that his health requires other diet.

1 SECTION 36. When a prisoner is sentenced to solitary imprison-
 2 ment and hard labor in a jail or house of correction, the master or
 3 keeper shall execute such sentence by confining him in one of the
 4 cells, and during the time of solitary imprisonment, he shall be fed
 5 with bread and water only, unless other food is necessary for the
 6 preservation of his health. No intercourse shall be allowed with a
 7 prisoner in solitary imprisonment, except for the conveyance of
 8 food and other necessary purposes.

Execution of
 sentence to
 solitary
 imprisonment.
 1834, 151, § 14.
 R. S. 143, § 20.
 1854, 303.
 G. S. 178, § 34.
 P. S. 220, § 39.

1 SECTION 37. As soon as the term of solitary imprisonment has
 2 expired, the master or keeper shall provide the prisoner with tools
 3 and materials or other means for work in a suitable manner, in
 4 which he can be usefully or profitably employed in the house of
 5 correction or jail, or close yard thereof; but no prisoner shall be
 6 employed in engraving or printing. Such prisoner may, if neces-
 7 sary, be confined by a log and chain or in such other manner as
 8 shall prevent his escape without unnecessarily inflicting bodily pain
 9 or interrupting his labor. The county commissioners, or, if the
 10 punishment is inflicted in the jail, the sheriff, shall oversee the ex-
 11 ecution of all such sentences.

Work for
 prisoners; log
 and chain.
 1834, 151, § 15.
 R. S. 143, § 21.
 1850, 289, § 4.
 G. S. 178, § 35.
 1871, 147.
 P. S. 220, § 40.

1 SECTION 38. If a prisoner is refractory, or if, during the time for
 2 which he is sentenced to hard labor, he refuses or neglects without
 3 reasonable cause to labor in a suitable manner when required, he
 4 shall be kept in solitary imprisonment and fed on bread and water,
 5 as before provided, so long as he is refractory or refuses to labor;
 6 but the keeper of a jail or master of a house of correction shall not
 7 keep a prisoner in solitary imprisonment for more than three days
 8 at one time without informing the sheriff or county commissioners
 9 thereof and of the reasons therefor.

Punishment of
 refractory
 prisoner.
 1834, 151, § 15.
 R. S. 143, § 22.
 1853, 34.
 G. S. 178, § 36.
 P. S. 220, § 41.

1 SECTION 39. If a person who is confined in a jail or house of
 2 correction upon a conviction or charge of a crime against the com-
 3 monwealth is refractory or disorderly, or wilfully or wantonly de-
 4 stroys or injures any article of furniture or other property or any
 5 part of such prison, the sheriff or county commissioners or penal
 6 institutions commissioner of the city of Boston, respectively, after
 7 due inquiry, may cause him to be kept in solitary imprisonment not
 8 more than ten days for one offence; and, during such imprison-
 9 ment, to be fed with bread and water only, unless other food is
 10 necessary for the preservation of his health.

Solitary im-
 prisonment for
 refractory
 prisoner.
 1818, 123, § 4.
 1823, 148, § 3.
 1834, 151, § 13.
 R. S. 143, § 46.
 1857, 35.
 G. S. 178, § 37.
 P. S. 220, § 42.

1 SECTION 40. If a person who is committed to jail on mesne
 2 process or execution, or for any cause other than those mentioned
 3 in the preceding section, is convicted of any of the offences therein
 4 named, he shall be punished by solitary imprisonment, as directed
 5 in said section, for not more than ten days for each offence, and
 6 shall be liable in an action of tort, to be commenced by the sheriff
 7 or county treasurer in the name and to the use of the county, for
 8 double the amount of the damage done to the jail, furniture or
 9 other property.

Punishment of
 poor debtors,
 etc., for depre-
 dations.
 1823, 148, § 3.
 1834, 151, § 13.
 R. S. 143, § 47.
 G. S. 178, § 38.
 P. S. 220, § 43.

1 SECTION 41. The provisions of the two preceding sections shall
 2 not affect the authority of a sheriff, jailer or master of a house of

Sheriff's and
 keeper's au-
 thority.

1834, 151, § 13. correction to preserve order and enforce strict discipline among the 3
 R. S. 143, § 48. prisoners in his custody. P. S. 220, § 44. 4
 G. S. 178, § 39.

Solitary cell. SECTION 42. The officers who have the custody and charge of 1
 1873, 143. prisoners in the several prisons and other places of confinement 2
 1876, 61, §§ 1, 3. shall see to it that every cell therein which may be used as a place 3
 P. S. 222, §§ 3, 5. for solitary imprisonment is properly ventilated and furnished with 4
 a form of boards, not less than six and one-half feet long, eighteen 5
 inches wide and four inches high from the floor, and with a suffi- 6
 cient amount of bedding to protect the inmate from injury to 7
 health. The prison commissioners shall ascertain whether the re- 8
 quirements of this section are observed. 9

Labor of Prisoners.

Establishment of industries. SECTION 43. The prison commissioners and the warden of the 1
 1887, 447, §§ 1, 7. state prison, the superintendent of the Massachusetts reformatory, 2
 1888, 22; 403, of the reformatory prison for women or of the state farm, masters, 3
 §§ 1, 5. keepers or superintendents of jails and houses of correction, or of 4
 1897, 412, § 3; any other penal institution of the commonwealth, or of any county, 5
 434. shall determine the industries which shall be established and main- 6
 1900, 269. tained in the respective institutions which are under the control of 7
 1901, 364, § 2. said officers. The prisoners in said institutions shall be employed 8
 173 Mass. 217. in said industries under regulations which shall be established by 9
 the prison commissioners, but no contract shall be made for the 10
 labor of prisoners, except that, with the approval of the prison 11
 commissioners, prisoners may be employed in cane seating and the 12
 manufacture of umbrellas under the "piece price system", so called. 13

Instructors. SECTION 44. The warden, superintendent, master or keeper of 1
 1887, 447, § 2. any institution described in the preceding section may, with the 2
 1897, 434. approval of the prison commissioners, appoint such superintendents 3
 1900, 269. and instructors to instruct the prisoners in said industries as he and 4
 the prison commissioners shall consider necessary. Such superin- 5
 tendents and instructors shall have the same authority relative to 6
 the prisoners as the subordinate officers of the institution in which 7
 they are employed. Their compensation shall be fixed and they 8
 may be removed by the warden, superintendent, master or keeper, 9
 with the approval of the prison commissioners. 10

Articles to be produced. SECTION 45. The prison commissioners shall, as far as possible, 1
 1887, 447, § 13. cause such articles and materials as are used in the public insti- 2
 1898, 334, § 1. tutions of the commonwealth and of the several counties which are 3
 1900, 269. established, maintained or supported, wholly or in part, by the ap- 4
 propriation of public money or such as are used in the public 5
 institutions of cities which, according to the latest census, state or 6
 national, had a population of forty thousand inhabitants, to be pro- 7
 duced by the labor of prisoners in the institutions named in section 8
 forty-three. 9

Industries at Massachusetts reformatory. SECTION 46. They and the superintendent of the Massachusetts 1
 1884, 255, § 28. reformatory shall endeavor to establish in said reformatory such 2
 1888, 403, § 7. industries as, within the provisions of this chapter, will enable 3
 prisoners employed therein to learn valuable trades. 4

1 SECTION 47. The number of prisoners in all the institutions
 2 named in section forty-three who may be employed in the industries
 3 hereinafter named, shall be limited as follows: in the manufacture
 4 of brushes, not more than eighty; in the manufacture of cane chairs
 5 with wood frames, not more than eighty; in the manufacture of
 6 clothing other than shirts or hosiery, not more than three hundred
 7 and seventy-five; in the manufacture of harnesses, not more than
 8 fifty; in the manufacture of mats, not more than twenty; in the
 9 manufacture of rattan chairs, not more than seventy-five; in the
 10 manufacture of rush chairs, not more than seventy-five; in the man-
 11 ufacture of shirts, not more than eighty, and they shall be women;
 12 in the manufacture of shoes, not more than three hundred and
 13 seventy-five; in the manufacture of shoe heels, not more than one
 14 hundred and twenty-five; in the manufacture of trunks, not more
 15 than twenty; in stone cutting, not more than one hundred and
 16 fifty; in laundry work, not more than one hundred.

Limitation of
prison indus-
tries.
1883, 217.
1887, 447, § 8.
1888, 403, § 2.
1891, 371.
1894, 460.
1897, 412, § 1.

1 SECTION 48. Not more than thirty per cent of the number of
 2 inmates of any penal institution which has more than one hundred
 3 inmates shall be employed in any one industry, except cane seating
 4 and the manufacture of umbrellas.

Limit of num-
ber to be
employed in
one industry.
1897, 412, § 2;
480.

1 SECTION 49. The provisions of the two preceding sections shall
 2 not apply to prisoners who are engaged in the manufacture of
 3 goods for use in the penal or public charitable institutions or hos-
 4 pitals of the commonwealth, of the counties thereof or of the cities
 5 described in section forty-five.

Application of
preceding sec-
tions.
1897, 412, § 4.

1 SECTION 50. If the prison commissioners and the warden, super-
 2 intendent, master or keeper of any institution named in section
 3 forty-three consider the employment of prisoners or a part of them
 4 upon the piece price plan expedient, they shall advertise for bids
 5 therefor, which shall be opened publicly, and a copy and record
 6 thereof shall be kept by the prison commissioners. If said offi-
 7 cers consider it inexpedient to accept any of such bids, contracts
 8 may be made with other persons. Copies of all contracts for the
 9 employment of prisoners shall be kept by the prison commission-
 10 ers, and shall at all times be open to public inspection.

Bids for piece
price contracts.
1894, 451.
1897, 434.
1900, 269.

1 SECTION 51. The tools, implements and materials required for
 2 use in manufacturing in any penal institution named in section
 3 forty-three shall, and such machinery as may be necessary to replace
 4 any which becomes unfit for use, or which is destroyed by fire or
 5 by the malicious acts of prisoners or to establish new trades or in-
 6 dustries may, be purchased by the warden, superintendent, master
 7 or keeper thereof under the supervision of the prison commission-
 8 ers after estimates or requisitions, in such form as he shall from
 9 time to time require, have been approved by him.

Purchase of
implements
and materials.
1887, 447, §§ 1, 3.
1888, 403, § 3.
1891, 228, § 1.
1897, 434.
1900, 269.

1 SECTION 52. Goods which have been manufactured in any of
 2 the institutions named in section forty-three shall, with the ap-
 3 proval of the prison commissioners, in such manner as they shall
 4 from time to time prescribe, be sold by the warden, supintendent,
 5 master or keeper thereof at not less than the wholesale market price

Sale of man-
ufactured
goods.
1887, 447, §§ 3,
13.
1888, 403, § 3.
1897, 412, § 5;
434.
1900, 269.

which prevails at the time of sale for goods of the same description and quality; but this provision shall not apply to goods furnished to public institutions for the use of the inmates thereof. The proceeds of such sales shall be paid by the purchasers to the respective institutions from which the goods are delivered.

Purchasing
and selling
agents.
1888, 403, § 3.

SECTION 53. The warden, superintendent, master or keeper of any institution named in section forty-three may, with the approval of the prison commissioners, appoint agents who, under such regulations as the prison commissioners shall from time to time establish, shall purchase tools, implements, materials and machinery and sell manufactured goods as aforesaid. They may be removed at the pleasure of the officer by whom they were appointed and shall receive such compensation as said officer with the approval of the prison commissioners shall determine. The prison commissioners shall have no authority to purchase or sell any articles for any institution.

Supply of
articles to
institutions.
1887, 447, § 13.
1897, 434.
1898, 334, §§ 2-4.
1900, 269.

SECTION 54. The warden, superintendent, master or keeper of each institution named in section forty-three shall make a full report to the prison commissioners when and as they require relative to the labor of the prisoners. The prison commissioners shall from time to time send to them, to the principal officers of public institutions which are described in section forty-five, to the auditor of the commonwealth and to the auditing and disbursing officers of each county and city, a list of such articles and materials as can be produced by the labor of the prisoners. The warden, superintendent, master, keeper or principal officer of any such institution in which such articles or materials are needed shall apply therefor to the prison commissioners upon forms to be provided by them. The prison commissioners shall thereupon forthwith inform him in what institutions they are produced, and he shall purchase them from any institution so designated. If they are needed immediately and are not on hand, the prison commissioners shall forthwith so notify him, and he may purchase them elsewhere; but a bill for articles or materials named in said list which are so purchased shall not be paid unless it is accompanied by a certificate of the prison commissioners that they could not be supplied from any of said institutions.

Board to deter-
mine prices.
1898, 334, § 5.
1901, 364.

SECTION 55. The auditor of the commonwealth, the controller of county accounts and the chairman of the board of prison commissioners shall constitute a board to determine the prices of articles or materials manufactured and sold under the provisions of sections forty-five and fifty-four. The prices shall be uniform and shall conform as nearly as may be to the usual market price of like goods manufactured elsewhere. The members of the board shall receive no compensation for such services, but the actual and necessary expenses incurred by them in the performance of such services shall be paid from the appropriation for the incidental and contingent expenses of the prison commissioners.

Accounting
for receipts
and payment
of expenses.

SECTION 56. The receipts from the labor of prisoners in the state prison, the Massachusetts reformatory, the reformatory prison

3 for women and the state farm shall be paid into the treasury of the
 4 commonwealth monthly, and the receipts from the labor of prisoners
 5 in a jail or house of correction shall be paid into the county treas-
 6 ury monthly, and so much thereof as is necessary to pay the ex-
 7 pense of maintaining the industries in said institutions shall be
 8 expended therefrom for that purpose; but not until schedules of
 9 such expenses have been sworn to by the warden or superintendent
 10 and approved by the prison commissioners. Receipts from any one
 11 of the institutions shall be applied to paying the bills of that institu-
 12 tion only. The warden or superintendent of the state prison, Massa-
 13 chusetts reformatory, reformatory prison for women or state farm
 14 shall, as often as he has in his possession money to the amount of
 15 ten thousand dollars which he has received under the provisions of
 16 the thirteen preceding sections, pay it into the treasury of the com-
 17 monwealth, and the master or keeper of a jail or house of correction
 18 shall, as often as he has in his possession such money to the amount
 19 of five thousand dollars, pay it into the county treasury.

1864, 303, § 2.
 1874, 385, § 23.
 P. S. 221, § 59.
 1884, 255, § 29.
 1887, 447, §§ 10,
 11.
 1898, 259, 277.

1 SECTION 57. Bills for tools, implements, machinery and mate-
 2 rials purchased by, and the salaries of persons employed in, the
 3 state prison, the Massachusetts reformatory, the reformatory prison
 4 for women and the state farm under the provisions of the fourteen
 5 preceding sections shall be paid monthly from the treasury of
 6 the commonwealth, upon schedules prepared and sworn to by the
 7 warden or superintendent and approved by the prison commis-
 8 sioners. Bills for tools, implements, machinery and materials pur-
 9 chased by, and the salaries of persons employed in, the jails and
 10 houses of correction under the provisions of said sections shall be
 11 paid monthly from the county treasury, upon schedules prepared
 12 and sworn to by the master or keeper and approved by the prison
 13 commissioners. The schedules of bills for tools, implements and
 14 machinery and of bills for materials and salaries shall be kept
 15 separate from each other and from the schedules of bills incurred for
 16 the maintenance of the prison, reformatory, jail or house of cor-
 17 rection.

Payment of
 salaries and
 bills for tools,
 etc.
 1887, 447, §§ 3, 4.
 1891, 228, § 3.

1 SECTION 58. The warden, superintendent, master or keeper of
 2 any institution named in section forty-three may sue or be sued
 3 upon any contract of purchase or sale made by him under the pro-
 4 visions of the fifteen preceding sections. No suit shall abate by
 5 reason of a vacancy in any such office, but the successor of any such
 6 officer may, and upon motion of the adverse party shall, prosecute
 7 or defend it. The warden, superintendent, master or keeper may
 8 submit a controversy relative to such contract or an action thereon
 9 to the final determination of arbitrators or referees who shall be
 10 approved by the governor, or, if the suit is brought by or against
 11 the master or keeper of a jail or house of correction, they shall be
 12 approved by the county commissioners.

Suits by and
 against warden,
 etc.
 1887, 447, § 12.
 1888, 403, § 4.
 1897, 434.

1 SECTION 59. The prison commissioners may cause the prisoners
 2 in any jail or house of correction to be employed within the pre-
 3 cincts of the prison in preparing material for road making; but
 4 no machine except such as is operated by hand or foot power shall
 5 be used in connection with such employment.

Preparation of
 road material.
 1898, 365, § 1.

Highway com-
mission to give
instruction.
1898, 365, § 2.

SECTION 60. The Massachusetts highway commission shall, at the request of the prison commissioners, give them such information and instructions as will enable them to direct said employment in a manner which will furnish suitable and proper material for road building.

Sale of road
material.
1898, 365, § 3.

SECTION 61. Material so prepared may be sold to the county commissioners or to city and town officers who have the care of public roads. All material not so sold shall be purchased by the Massachusetts highway commission, at such price as they determine is fair and reasonable, for use on state highways; but the prison commissioners may cause any of said prisoners to be employed upon material furnished by said highway commission, who shall then pay for the labor of preparation such price as may be agreed upon by said prison commissioners and said highway commission.

Payment of
expenses.
1898, 365, § 4.

SECTION 62. All money received under the provisions of the three preceding sections shall be paid into the county treasury, and the expenses of employing prisoners thereunder shall be paid from the county treasury, in the manner provided in section fifty-six. Payment for material sold or labor performed thereunder shall be made to the master or keeper of the jail or house of correction where it is prepared or performed.

Land for in-
dustrial camp.
1898, 393, §§ 1, 2.

SECTION 63. The governor and council may purchase or otherwise take in fee any parcel of waste or unused land, not exceeding one thousand acres in area, for the purpose of reclaiming, improving and disposing of it for the benefit of the commonwealth. When land has been so taken, the governor and council shall cause a description thereof as certain as is required in an ordinary conveyance of land to be filed in the registry of deeds for the county or district in which the land lies, with a statement, signed by the governor, that it is taken on behalf of the commonwealth for the purposes described in this section. The act and time of filing such description shall be considered the act and time of taking such land, and shall be sufficient notice to all persons that the land has been so taken. The title to such land shall then vest in the commonwealth.

Damages.
1898, 393, § 3.

SECTION 64. The governor and council may settle by agreement or arbitration the amount to be paid to any person for land so taken, and if such amount is not so determined within sixty days after it has been taken, they shall appraise the value of every unsettled interest therein as far as can be ascertained and file the appraisal with the auditor, who shall, upon the application of any person whose interest has been so appraised, certify the amount awarded to him by such appraisal, and a warrant shall be drawn for the payment of such amount from the treasury of the commonwealth. The acceptance of such payment shall be an acknowledgment of full satisfaction. A person who is aggrieved by such appraisal may, upon application within one year after the taking, have his damages assessed by a jury in the manner provided for the taking of land for highways.

1 SECTION 65. After such land has been so taken, the prison
 2 commissioners, with the approval of the governor and council, shall
 3 cause iron buildings of cheap construction to be erected thereon for
 4 the accommodation of not more than one hundred prisoners. When
 5 such buildings are ready for occupancy, the governor may issue his
 6 proclamation establishing on such land a temporary industrial camp
 7 for prisoners, and the prison commissioners may appoint a superin-
 8 tendent thereof, who shall hold his office at their pleasure, give
 9 such bond as they require, receive such salary as they determine
 10 and who shall have the custody of all prisoners removed thereto.
 11 The superintendent, with the approval of the prison commissioners,
 12 may appoint and determine the compensation of assistants, and they
 13 shall hold their office at his pleasure.

Establishment
of camp.
Superintend.
ent.
1898, 393, §§ 4-6.

1 SECTION 66. Prisoners held at such camp shall be subject to all
 2 the laws applicable to prisoners at the state farm and, with the
 3 approval of the prison commissioners, may be released from said
 4 camp by the superintendent thereof in the same manner as prisoners
 5 are released from the state farm by the trustees thereof. They
 6 shall be employed in reclaiming and improving said land and in
 7 preparing material for road building, by hand labor, under regu-
 8 lations made by the prison commissioners. The Massachusetts
 9 highway commission and the board of agriculture shall from time to
 10 time, at their request, give them such information as will enable
 11 them to cause the work to be prosecuted to the best advantage.

Employment
of prisoners.
1898, 393, §§ 7, 8.

1 SECTION 67. The expenses of maintaining said camp shall be
 2 paid by the commonwealth, upon schedules sworn and certified to
 3 by the superintendent and approved by the prison commissioners.
 4 Purchases and sales on account of said camp, except as to the
 5 land, shall be made by the superintendent with like approval. Re-
 6 cepts for articles or materials sold shall be paid into the treasury
 7 of the commonwealth each month.

Expense of
maintenance.
1898, 393, § 9.

1 SECTION 68. Land reclaimed or improved, as aforesaid, may be
 2 applied to the use of the commonwealth, or it may be disposed of
 3 by the governor and council at public or private sale. Any road
 4 material prepared, as aforesaid, may be sold by the superintendent
 5 of said camp, with the approval of the prison commissioners, to
 6 the authorities of the commonwealth or of any county, city or
 7 town.

Disposition of
improved land.
1898, 393, § 10.

Binding Out Female Prisoners.

1 SECTION 69. The commissioners may, with the consent of a
 2 woman who is serving a sentence in the reformatory prison for
 3 women or in a jail or house of correction, and with the consent of
 4 the county commissioners, if she is in a jail or house of correction,
 5 contract to have her employed in domestic service for such term,
 6 not exceeding her term of imprisonment, and upon such conditions,
 7 as they consider proper with reference to her welfare and reforma-
 8 tion. If, in their opinion, her conduct at any time during the term
 9 of the contract is not good, they may order her to return to the
 10 prison from which she was taken.

Binding out
female prison-
ers.
1879, 229, § 3.
1880, 151, § 1.
P. S. 219, § 23.

Penalty for
refusing to
return to
prison.
1880, 151, §§ 2-4.
P. S. 219, §§ 24,
25.
1894, 260.

SECTION 70. If she leaves her place of service, or if, having been ordered by the commissioners to return to prison, she neglects or refuses so to do, she shall be held to have escaped from prison and may be arrested and returned to the prison from which she was taken as if she had escaped therefrom, and shall, upon conviction of such escape, be punished by imprisonment in the reformatory prison for women or in a jail or house of correction for not less than three months nor more than one year. The expense of her arrest and return to prison shall be paid in the same manner as the expenses of the arrest and return of a prisoner who escapes from prison.

Privileges.

Locked letter
box.
1878, 276.
1879, 294, § 12.
P. S. 222, § 7.

SECTION 71. Every inmate of a penal or reformatory institution shall be allowed to write letters to the principal officer or to any member of the supervising board thereof. A locked letter box, accessible to the inmates, shall be placed in each institution, in which they may deposit such letters, and such letters shall be duly delivered according to the address thereon. The keys of the boxes in the state prison, in the Massachusetts reformatory and in the reformatory prison for women shall be kept by the commissioners, and of those in each of the other institutions by the principal officer thereof.

Exercise of
religious be-
lief, etc.
1834, 151, § 16.
R. S. 143, § 40.
G. S. 17, § 40.
1875, 126, §§ 1, 2.
1879, 158, §§ 1, 2.
P. S. 222, §§ 8, 9.

SECTION 72. An inmate of any prison or other place of confinement or public charitable or reformatory institution shall not be denied the free exercise of his religious belief and the liberty of worshipping God according to the dictates of his conscience, in the place where he is confined; and he may, in illness, upon request to the warden, keeper or master, receive the visits of any clergyman whom he may wish. The officers and boards of officers who have the management and direction of such institutions shall make such regulations as may be necessary to carry out the intent and provisions of this section. The provisions of this section shall not be so construed as to impair the discipline of any such institution, so far as may be needful for the good government and safe custody of its inmates, nor prevent the assembling of all the inmates in the chapel thereof for such general religious instruction, including the reading of the Bible, as the board having charge of the institution considers expedient.

Sunday school
and other
instruction.
1838, 152, § 3.
1848, 324, § 3.
G. S. 179, § 43.
1869, 255.
1871, 336.
1879, 294, § 34.
P. S. 221, § 30.
1886, 197.

SECTION 73. The warden of the state prison, with the consent of the commissioners, may cause a sabbath school to be maintained in the prison for the instruction of the prisoners in their religious duties, and may permit such persons as they consider suitable to attend it as instructors, under such regulations as the commissioners may establish. The warden may also, subject to the restrictions and regulations of the commissioners, maintain schools of instruction for the prisoners, at such times, except on Sunday, as he, with the approval of the commissioners, may determine, and for such purpose, may expend, from the appropriation made for the support of the prison, not more than two thousand dollars annually.

1 SECTION 74. The superintendent of the Massachusetts reform- School at
2 atory and the commissioners may expend not more than two thou- Massachusetts
3 sand dollars annually for the maintenance of a prison school. reformatory.
1884, 255, § 28.

1 SECTION 75. The county commissioners, or, in the county of Instruction in
2 Suffolk, the mayor of the city of Boston, with the sheriff of the jails, etc.
3 county, may, at the expense of their county or city, furnish in- 1848, 324, § 3.
4 struction in reading and writing for one hour each evening, except 1854, 448, § 33.
5 Sunday, to prisoners in the jails and houses of correction who may G. S. 178, § 41.
6 be benefited thereby and who wish to receive it. P. S. 220, § 46.
1885, 266, § 6.

1 SECTION 76. The keeper or master of a jail or house of correc- Moral and
2 tion shall, at the expense of the county, provide a copy of the Bible religious in-
3 or of the New Testament for each prisoner under his charge who is struction in
4 able and wishes to read, which shall be used by him at proper sea- jails, etc.
5 sons during his confinement. He may, at the expense of the county, 1818, 123, § 4.
6 provide books and papers for the use of such prisoners, but not ex- 1834, 151, § 16.
7 ceeding in cost one hundred dollars a year. The county commis- R. S. 143, § 40.
8 sioners may, in their discretion and at the expense of the county, 1848, 29, § 1.
9 provide moral and religious instruction for such prisoners. G. S. 178, § 40.
1881, 125.
P. S. 220, § 45.

1 SECTION 77. In the assignment of cells to prisoners in a house Light for
2 of correction, due regard shall be had to the accommodation of reading.
3 those who are able and wish to read; and from the first day of 1862, 127, § 2.
4 October to the first day of April, annually, all such prisoners who P. S. 220, § 9.
5 are confined to labor during the day shall be provided with sufficient
6 light to enable them to read for at least one hour each evening.

1 SECTION 78. If the mother of a child under the age of eighteen Female pris-
2 months is imprisoned in a jail, house of correction, workhouse or oner may have
3 other place of confinement and is capable and desirous of taking custody of
4 care of it, the keeper shall, upon the order of the court or magis- infant.
5 trate committing her, or of any overseer of the poor, receive the 1858, 57, § 1.
6 child and place it under the care and custody of its mother. G. S. 178, § 29.
P. S. 220, § 34.

1 SECTION 79. If the inspectors, directors or like officers of such Removal of
2 institution are of opinion that the health and comfort of such child such child.
3 require its removal, or that it is expedient that it should be removed, 1858, 57, § 2.
4 they shall give notice to the father or other kindred thereof; or, G. S. 178, § 30.
5 if no kindred can be found to receive it, to the overseers of the P. S. 220, § 35.
6 poor of the city or town in which it has a legal settlement, who
7 shall receive it. If it has no settlement in this commonwealth, it
8 shall be sent to the state hospital as is provided in the case of alien
9 paupers.

Removals.

1 SECTION 80. The prison commissioners may remove a prisoner From state
2 held in the state prison upon a sentence for a term of years to the prison to
3 Massachusetts reformatory, and may at any time return him to the Massachusetts
4 state prison. 1894, 249, § 1. 1901, 340. 148 Mass. 168. reformatory.
1884, 255, § 14;
331, § 5.

1 SECTION 81. They may, with the consent of the governor and — to state
2 council, remove an aged or infirm prisoner in the state prison to farm.
3 the state farm, and may at any time return him to the state prison. 1890, 180, § 1.

From reform-
atory prison
for women.
1879, 294, § 4.
P. S. 219, § 5.
1896, 317.

SECTION 82. They may remove a prisoner in the reformatory prison for women to the state farm or to a jail or house of correction, or, if she has been transferred to said prison from the industrial school for girls, to the state farm or to a house of correction.

From Massa-
chusetts re-
formatory.

SECTION 83. They may remove a prisoner in the Massachusetts reformatory to the state farm or to any jail or house of correction.

1884, 255, §§ 12, 15.

1887, 292, § 1.

From state
farm to Massa-
chusetts re-
formatory.
1885, 35, § 2.

SECTION 84. They may remove a sentenced male prisoner from the state farm to the Massachusetts reformatory, and may at any time return him to the state farm.

— to house of
correction.
1890, 278, § 1.

SECTION 85. They may, upon the application of the trustees of the state hospital and the state farm, remove a sentenced prisoner from the state farm to any house of correction in the county in which he was convicted, and may, upon like application, return him to the state farm.

— to reforma-
tory prison for
women.
1879, 294, § 4.
P. S. 219, § 5.

SECTION 86. They may remove a sentenced female prisoner at the state farm to the reformatory prison for women, and she shall there serve the remainder of her term of sentence.

From Lyman
school for
boys, etc.
1884, 255, § 13.
1901, 128, 359.

SECTION 87. They may, upon the application of the trustees or board in charge of the Lyman and industrial schools, of the house of employment and reformation for juvenile offenders established in the city of Boston, or of any other reform school established under authority of any general or special act, remove to the Massachusetts reformatory a boy who is confined in any of said schools upon a sentence for crime, and may at any time, upon like application, return him to the school from which he was transferred.

From indus-
trial school
for girls.
1880, 208, § 3.
P. S. 89, § 47.

SECTION 88. They may, upon the application of the trustees of the Lyman and industrial schools, remove to the reformatory prison for women any girl who was committed for a crime to the industrial school for girls, and, upon like application, may return her to the industrial school for girls.

From jail to
jail.
R. S. 143, § 43.
G. S. 178, § 2.
1870, 370, § 2.
1879, 294, § 3.
P. S. 219, § 4;
220, § 2.
[1 Op. A. G.
516.]

SECTION 89. They may remove a prisoner from one jail to another in the same or another county, and he shall serve the remainder of his sentence in the place to which he is removed. The sheriff may, at his discretion, remove a prisoner from one jail to another in the same county for his health or safe keeping or for his more convenient appearance at court.

From jail to
house of cor-
rection.

SECTION 90. They may remove a prisoner in jail under sentence to a house of correction.

1881, 220.

P. S. 220, § 2.

1882, 241, § 2.

From one
house of cor-
rection to
another.

SECTION 91. They may remove a prisoner from one house of correction to another in the same or another county.

1870, 370, § 2.

1879, 294, § 3.

P. S. 219, § 4.

From house of
correction to
jail.

SECTION 92. They may remove a prisoner in a house of correction under sentence to a jail.

1882, 241, § 2.

1 SECTION 93. They may remove a male prisoner in a jail or
 2 house of correction to the Massachusetts reformatory, if he might,
 3 at the time of such removal, lawfully be sentenced to said reforma-
 4 tory, if they are of opinion that he is likely to be benefited by its
 5 reformatory influences, and they may at any time return him to the
 6 place of imprisonment from which he was removed.

From jail or
house of cor-
rection to
Massachusetts
reformatory.
1884, 255, § 12.

1 SECTION 94. They may remove a prisoner in a jail or house
 2 of correction to the state farm, and may at any time return him to
 3 the place of imprisonment from which he was removed.

— to state
farm.
1876, 96, § 1.
1879, 294, § 5.
P. S. 219, § 6.

1885, 35, § 1.

1899, 203, § 1.

1 SECTION 95. They may, at the request of the governor and
 2 council, remove to the state farm for treatment a sentenced prisoner
 3 in a jail or house of correction who is suffering from disease which,
 4 in the opinion of the governor and council, cannot be safely and
 5 properly treated in the jail or house of correction, and they may at
 6 any time return him to the place from which he was removed.

— to state
farm if ill.
1894, 214, § 1.

1 SECTION 96. They may remove prisoners from jails and houses
 2 of correction to the temporary industrial camp for prisoners and
 3 may, at any time, return them to the place of imprisonment from
 4 which they were removed.

— to industrial
camp.
1898, 393, § 7.

1 SECTION 97. They may remove a sentenced female prisoner in
 2 a jail or house of correction to the reformatory prison for women,
 3 and she shall there serve the remainder of her term of sentence.

— to women's
prison.
1874, 385, § 15.
1879, 294, § 4.
P. S. 219, § 5.

1 SECTION 98. If it appears to the physician of a house of cor-
 2 rection that a female convict is pregnant, a justice of the superior
 3 court or of a police, district or municipal court may, upon applica-
 4 tion of the master or keeper of the house, order her to be removed
 5 to any workhouse in the same county for such term as is expedient;
 6 and, at any time before the expiration of her sentence, may cause
 7 her to be returned to the house of correction. The county shall
 8 pay two dollars a week for her support and custody to the city or
 9 town to which she is so removed.

Pregnant
females.
1854, 416, § 2.
1856, 40.
G. S. 178, § 16.
P. S. 220, § 17.

1 SECTION 99. The prison commissioners may remove from one
 2 jail or house of correction to another, or to the Massachusetts
 3 reformatory, or to the reformatory prison for women, a prisoner
 4 who has been sentenced to such jail or house of correction by any
 5 court of the United States.

Removal of
prisoners
committed by
United States
courts.
1895, 273.

1 SECTION 100. They may, upon the certificate of the physician
 2 of a prison, jail or house of correction, temporarily place any
 3 prisoner who is under sentence of imprisonment therein or any
 4 person who is held in any jail for trial or sentence, except for a
 5 capital crime, in such hospital as they shall designate, for such
 6 surgical treatment or operation as cannot otherwise be safely or
 7 properly undertaken, and they may, at any time, return such pris-
 8 oner or person to the prison, jail or house of correction from which
 9 he was temporarily removed. A prisoner or person so placed shall,
 10 during his absence from such prison, jail or house of correction, be

Surgical
treatment.
1882, 207.

deemed to be in the custody of the officer having charge thereof; 11
and, in computing the term of his confinement upon his sentence to 12
imprisonment, the time of his confinement in said hospital shall be 13
considered as a part of such term. 14

Removal
of insane
prisoners from
state prison
and reforma-
tories.
1844, 120.
1856, 135.
G. S. 180, §§ 1-3.
1862, 8.
1880, 250, § 5.
P. S. 222, §§ 10,
11.
1885, 320, §§ 1, 2.
1886, 101, § 4.
1895, 390, § 3.
1898, 433, §§ 24,
28.
173 Mass. 550.
[1 Op. A. G.
113.]

SECTION 101. The state board of insanity shall designate two 1
persons, experts in insanity, to examine prisoners in the state 2
prison, the Massachusetts reformatory or the reformatory prison for 3
women, who are alleged to be insane. If any such prisoner appears 4
to be insane, the warden or superintendent shall notify one of the 5
persons so designated, who shall, with the physician of the prison, 6
examine the prisoner and report to the governor the result of their 7
investigation. If, upon such report, the governor considers the 8
prisoner insane and his removal expedient, he shall issue his warrant, 9
directed to the warden or superintendent, authorizing him to cause 10
the prisoner, if a male, to be removed to the state asylum for insane 11
criminals, and if a female, to be removed to one of the state insane 12
hospitals, there to be kept until, in the judgment of the superin- 13
tendent and trustees of the hospital to which the prisoner has been 14
committed, he or she should be returned to prison. When the 15
superintendent and trustees determine that the prisoner should be 16
so returned, they shall so certify upon the warrant of the governor, 17
and notice shall be given to the warden or superintendent of the 18
prison, who shall thereupon cause the prisoner to be reconveyed to 19
the prison, there to remain pursuant to the original sentence, com- 20
puting the time of his detention or confinement in the hospital as 21
part of the term of his imprisonment. The person who makes such 22
examination of a prisoner shall, if he is not a salaried officer of the 23
state board of insanity, receive three dollars a day for his services 24
for each day so employed and his actual travelling expenses, which 25
shall be paid from the annual appropriation of the prison in which 26
the prisoner is examined. 27

—in other
prisons.
R. S. 145, §§ 1, 2.
1853, 259.
G. S. 180, §§ 4, 5.
1880, 250, § 6.
P. S. 222, §§ 12,
13.
1895, 390, § 3.

SECTION 102. If a prisoner in a jail, house of correction or 1
prison other than those named in the preceding section appears to 2
be insane, the physician in attendance shall make a report thereof 3
to the jailer or master, who shall transmit the same to one of the 4
judges mentioned in section thirty-three of chapter eighty-seven. 5
The judge shall make inquiry into the facts and, if satisfied that 6
the prisoner is insane, shall, if a male, order his removal to the 7
state asylum for insane criminals, or if a female, to one of the state 8
insane hospitals, pursuant to the provisions of sections thirty-four 9
and thirty-five of said chapter. A person so removed who becomes 10
sane before the expiration of the sentence shall be forthwith re- 11
turned to the prison or house of correction from which he or she 12
was removed, there to remain pursuant to the original sentence, 13
computing the time of confinement in the hospital as part of the 14
term of imprisonment. 15

Transfer of
insane person
held for trial,
etc.
1881, 165, §§ 1, 3.
P. S. 222, § 14.
1895, 390, § 3.

SECTION 103. If a person who is held in jail for trial or for 1
sentence, except for a capital crime, appears to be insane, he may 2
be removed to the state asylum for insane criminals or if a female, 3
to one of the state insane hospitals, in the same manner as a pris- 4
oner may be removed from a house of correction under the provi- 5

sions of the preceding section. If a person so removed is, in the opinion of the trustees and superintendent of the hospital, restored to sanity, he shall forthwith be returned to the jail from which he was removed, where he shall be held in accordance with the terms of the process by which he was originally committed thereto.

SECTION 104. A prisoner who is removed or returned under the provisions of the twenty-four preceding sections shall be held in the place of imprisonment to which he is so removed or returned, in accordance with the terms of his original sentence, unless sooner discharged, and the period for which he is so removed shall be reckoned as a part of the term of his imprisonment.

1895, 273.

1899, 263, § 2.

Terms of original sentence to apply.
1880, 208, § 3.
P. S. 89, § 47.
1884, 255, § 15.
1890, 180, § 2;
278, § 2.
1894, 214, § 1;
249, § 2.

SECTION 105. Every order of removal of the prisoners shall be signed by the secretary of the board and shall be directed to the officer by whom it is to be executed. All mittimus, processes and other official papers by which a prisoner is committed or held, or attested copies thereof, shall, at the time of such removal, be transferred, with the order of removal, to the institution to which the prisoner is removed, and be kept therein as if he had been originally committed thereto; but if he is returned to the place from which he was removed, they shall be returned with him.

Order for removal.
1876, 96, § 1.
1879, 294, §§ 5, 9.
P. S. 219, §§ 6, 13.
1884, 255, § 16.
1885, 35, § 2.
1890, 180, § 3;
278, § 3.
1894, 214, § 2.
1895, 273.
1899, 263, § 3.

SECTION 106. An officer who is authorized to serve criminal process may execute an order of removal or return issued under the provisions of this chapter.

1870, 370, § 5. 1874, 384, § 18.
1879, 294, § 7. P. S. 219, § 8; 222, § 11. 1885, 320, § 2. 1894, 214, § 2.
1880, 250, § 5. 1884, 255, § 17. 1890, 180, § 3. 1899, 263, § 3.

Officers qualified to make removals.
1844, 120, § 2.
G. S. 180, § 3.

SECTION 107. The expense of the commitment of any person who is sentenced to imprisonment in the state prison, the Massachusetts reformatory or the reformatory prison for women shall be paid by the county from which the prisoner is committed, and shall be allowed in the same manner as other expenses in criminal cases.

Expense of commitment.
1880, 120, § 2.
P. S. 217, § 4.
1884, 255, § 18.

SECTION 108. The expense of the removal of a prisoner to or from the Massachusetts reformatory or from the reformatory prison for women to the state farm or to a jail or house of correction, or from the state farm to the Massachusetts reformatory or reformatory prison for women, or from the state farm to a house of correction, or of the removal of a sick prisoner from a jail or house of correction to the state farm or his return therefrom, shall be paid from the treasury of the commonwealth, and shall, before payment, be approved by the prison commissioners. The expense of the removal of a prisoner from one jail or house of correction to another, or from a jail or house of correction to the reformatory prison for women, shall be paid by the county from which such prisoner is removed.

— of removal.
1870, 370, § 6.
1874, 385, § 18.
1879, 229, § 4;
294, § 8.
1880, 120, § 4.
P. S. 219, §§ 9, 10.
1884, 255, § 18.
1885, 35, § 2.
1890, 278, § 4.
1894, 214, § 3.
1895, 273.

SECTION 109. The expense of supporting a prisoner who is transferred from the Massachusetts reformatory or the reformatory prison for women to a jail or house of correction shall be paid from the treasury of the commonwealth, if the prisoner was not originally sentenced from the county in which such jail or house of

— of support.
1880, 156, § 2.
P. S. 219, § 12.

correction is situated : but the bills therefor shall, before payment, 6
be approved by the prison commissioners. 7

Expense of
support.
1866, 280, § 2.
1870, 370, § 4.
1880, 156, § 1.
P. S. 219, § 11.
1890, 278, § 4.

SECTION 110. The expense of supporting a prisoner who is 1
transferred from a jail or house of correction in one county to 2
another, who is removed from the state farm to a house of correc- 3
tion or who is sentenced to a jail or house of correction in a county 4
other than that in which he was convicted shall be paid by the 5
county in which he was sentenced. If the amount to be paid can- 6
not be agreed upon by the county commissioners of the two coun- 7
ties, it may be determined by the superior court sitting in either 8
county. 9

Same subject.
1876, 96, § 2.
1879, 294, § 6.
P. S. 219, § 7.
1883, 148, § 1.
1886, 101, § 4.
1894, 214, § 3.
1898, 433, § 24.

SECTION 111. The expense of supporting a state prison convict 1
who is committed to a state insane hospital shall be paid by the 2
commonwealth. The expense of supporting a prisoner who is re- 3
moved from a jail or house of correction to the state farm shall 4
be paid into the treasury of the commonwealth by the county 5
from which he is removed, and the amount thereof shall be deter- 6
mined by the state board of charity. The expense of supporting a 7
sick prisoner who is removed to the state farm under the provisions 8
of section ninety-five, not exceeding three dollars and twenty-five 9
cents a week, shall be paid by the county from which he is removed. 10

Special district
police.
1899, 243.

SECTION 112. The governor, upon the written recommendation 1
of the prison commissioners, may from time to time appoint any 2
agent of the board a special district police officer for a term of 3
three years, unless sooner removed. Such officer may serve war- 4
rants and orders of removal or transfer of prisoners issued by said 5
commissioners, and shall be paid therefor such amount from the ap- 6
propriation for removing prisoners as the commissioners determine. 7

Permits to be at Liberty, Release on Probation and Discharge.

Deduction for
good conduct.
1857, 284, § 1.
1858, 77.
1859, 108.
G. S. 178, § 47;
179, § 51.
1880, 218, §§ 1,
3, 4.
1881, 40.
P. S. 222, §§ 20,
22.
1886, 323, § 7.
1894, 258.
1898, 443, § 1.
13 Gray, 618.
148 Mass. 168.
172 Mass. 264.
[1 Op. A. G. 9.]

SECTION 113. Every officer who is in charge of a prison or 1
other place of confinement, except the Massachusetts reformatory 2
and the state farm, shall keep a record of the conduct of each pris- 3
oner who is in his custody and whose term of imprisonment is four 4
months or more. Every such prisoner, except a prisoner who was 5
sentenced to the state prison for a crime which was committed on 6
or after the first day of January in the year eighteen hundred and 7
ninety-six, whose record of conduct shows that he has faithfully 8
observed all the rules and has not been subjected to punishment 9
shall be entitled to a deduction from the term of his imprisonment, 10
which shall be estimated as follows : upon a sentence of not less 11
than four months and less than one year, one day for each month : 12
upon a sentence of not less than one year and less than three 13
years, three days for each month : upon a sentence of not less than 14
three years and less than five years, four days for each month : 15
upon a sentence of not less than five years and less than ten years, 16
five days for each month : upon a sentence of ten years or more, 17
six days for each month. If a prisoner has two or more sentences, 18
the aggregate of his several sentences shall be the basis upon which 19

20 the deduction shall be estimated. A prisoner who is entitled to
 21 such deduction from the term of his imprisonment shall receive
 22 a written permit to be at liberty during the time so deducted, upon
 23 such terms as the board which grants the permit shall prescribe.
 24 Permits to prisoners in the state prison and in the reformatory prison
 25 for women shall be issued by the prison commissioners; to pris-
 26 oners in the state farm, by the trustees; to prisoners in jails and
 27 houses of correction, except in the county of Suffolk, by the county
 28 commissioners; to prisoners in the jails and house of correction in
 29 the county of Suffolk, by the penal institutions commissioner. If a
 30 prisoner violates any of the rules of his prison or other place of
 31 confinement, the board authorized by this section to grant permits
 32 shall decide what portion of the time, which would otherwise be
 33 deducted from the term of his imprisonment, shall be forfeited by
 34 such violation.

1 SECTION 114. If it appears to the prison commissioners that
 2 a prisoner who was sentenced to the state prison for a crime which
 3 was committed prior to the first day of January in the year eighteen
 4 hundred and ninety-six and who is serving his first sentence therein
 5 has reformed, they may, if, after deducting the time to which he is
 6 entitled by the preceding section, two-thirds of the minimum term
 7 of his sentence have expired, by a unanimous vote of all the mem-
 8 bers of the board, issue to him a permit to be at liberty during the
 9 remainder of his term of sentence upon such terms and conditions
 10 as they prescribe, if he has an assurance satisfactory to them that
 11 he will have employment as soon as he is discharged, or is other-
 12 wise so provided for that he will not become dependent upon public
 13 or private charity.

Permit to pris-
 oner in state
 prison.
 1894, 440, § 1.
 1895, 252.
 1897, 206.
 [1 Op. A. G.
 324, 487, 541.]

1 SECTION 115. If the record of a prisoner who was sentenced to
 2 the state prison for a crime committed on or after the first day of
 3 January in the year eighteen hundred and ninety-six shows that he
 4 has faithfully observed all the rules of the prison and has not been
 5 subjected to punishment, the commissioners shall, upon the expira-
 6 tion of his minimum term of sentence, issue to him a permit to be
 7 at liberty therefrom during the unexpired portion of the maximum
 8 term of his sentence, upon such terms and conditions as they shall
 9 prescribe. If the record shows that he has violated the rules of the
 10 prison, he may be given a like permit at such time after the expira-
 11 tion of the minimum term of his sentence as the commissioners
 12 shall determine. If the prisoner is held in the prison upon two or
 13 more sentences, he shall be entitled to receive such permit when
 14 he has served a term equal to the aggregate of the minimum terms
 15 of the several sentences, and he shall be subject to all the pro-
 16 visions of this section until the expiration of a term equal to the
 17 aggregate of the maximum terms of said sentences.

Same subject.
 1895, 504, § 2.
 1897, 204, § 2.
 1898, 240, 371.
 172 Mass. 264.

1 SECTION 116. If it appears to the governor and council that a
 2 prisoner who has been sentenced to the state prison as an habitual
 3 criminal has reformed, they may issue to him a permit to be at lib-
 4 erty during the remainder of his term of sentence, upon such terms
 5 and conditions as they prescribe.

Permit to
 habitual
 criminal.
 1887, 435, § 2.

Permit to
prisoner in
Massachusetts
reformatory.
1884, 255, § 33.
1886, 323, § 4.
1887, 375.
1888, 317.
1894, 249, § 2.
148 Mass. 168.

SECTION 117. If it appears to the prison commissioners that a prisoner in the Massachusetts reformatory, or a prisoner who has been removed therefrom to a jail or house of correction, has reformed, they may issue to him a permit to be at liberty during the remainder of his term of sentence, upon such terms and conditions as they shall prescribe: but no such permit shall, without the consent of the governor and council, be issued to a prisoner who has been transferred thereto from the state prison. They may delegate to a committee of their board or to their secretary, until their next meeting, the authority to decide when such permit shall be issued.

— to prisoner
in reformatory
prison for
women.
1880, 221, § 3;
247, § 2.
1881, 90, § 1.
P. S. 220, § 68;
221, § 62.
1888, 192.

SECTION 118. If it appears to the prison commissioners that a prisoner in the reformatory prison for women, or a prisoner who has been removed therefrom to a jail or house of correction, has reformed, they may issue to her a permit to be at liberty during the remainder of her term of sentence: but no permit shall, without the consent of the court which imposed the sentence, or, if the sentence was imposed by the superior court, without the consent of the district attorney for the county in which she was convicted, be issued to a prisoner who has been sentenced for a crime against person or property.

— to rogues,
vagrabonds,
etc.
1834, 151, § 8.
R. S. 143, § 13.
G. S. 178, § 17.
1862, 189.
1866, 235, § 5.
P. S. 220, § 66.
1884, 152, § 4.

SECTION 119. If it appears to the county commissioners, or, in the county of Suffolk, to the penal institutions commissioner of the city of Boston, that a prisoner in a house of correction or work-house who has been convicted of an offence named in section forty-six of chapter two hundred and twelve has reformed and is willing and desirous to return to an orderly course of life, they may issue to him a permit to be at liberty during the remainder of his term of sentence.

— to persons
imprisoned for
drunkenness.
1880, 221, § 3;
247, § 2.
P. S. 220, § 68.
1885, 375.
1886, 101, § 4.
1888, 443, § 2.

SECTION 120. If it appears to the state board of charity that a person who has been imprisoned for drunkenness at the state farm has reformed, or if it appears to the county commissioners, or, in the county of Suffolk to the penal institutions commissioner of the city of Boston, that a person who has been imprisoned for drunkenness in a jail, house of correction or other place of confinement has reformed, they may issue to him a permit to be at liberty during the remainder of his term of sentence.

Release on
probation.
1880, 124, § 6.
1881, 34, §§ 1, 2.
P. S. 220, § 69.
1891, 356, § 7.

SECTION 121. A probation officer may, with the consent of the county commissioners, or, in the county of Suffolk, of the penal institutions commissioner of the city of Boston, investigate the case of any person who is imprisoned in a jail or house of correction for a misdemeanor upon a sentence of not more than six months, or upon a longer sentence of which not more than six months remain unexpired, for the purpose of ascertaining the probability of his reformation if released from imprisonment. If, after such investigation, he recommends the release of the prisoner, and the court which imposed the sentence, or, if the sentence was imposed by the superior court, the district attorney, certifies a concurrence in such recommendation, the county commissioners or the penal institutions commissioner may, if they consider it expedient, release him

14 upon probation, upon such terms and conditions as they may pre-
 15 scribe and may require a bond for the fulfilment of such conditions.
 16 The surety upon any such bond may at any time take and sur-
 17 render his principal, and the county commissioners or the penal
 18 institutions commissioner may at any time order any prisoner re-
 19 leased by them upon probation to return to the prison from which
 20 he was released. The provisions of this section shall not apply to
 21 persons held upon sentence of the courts of the United States.

1 SECTION 122. The state board of charity shall have the same
 2 power to discharge a person who has been removed from a jail or
 3 house of correction to the state farm or from the state farm to a
 4 house of correction as it would have to release him from the state
 5 farm if he had been originally sentenced thereto, and shall have the
 6 same authority to release a prisoner who has been removed thereto
 7 from the Massachusetts reformatory as the prison commissioners
 8 would have to release him from said reformatory.

Discharge
from state
farm.
1876, 96, § 1.
1879, 294, § 5.
P. S. 219, § 6.
1887, 292, § 2.
1890, 278, § 2.
1899, 263, § 2.

1 SECTION 123. The county commissioners, or, in the city of
 2 Boston, the penal institutions commissioner, subject to the approval
 3 of a justice of the court which imposed the sentence, after six months
 4 from the time of sentence, may discharge a person sentenced to the
 5 house of correction, and the directors of a workhouse may dis-
 6 charge a person sentenced thereto upon a conviction under the pro-
 7 visions of section fifty-five of chapter two hundred and twelve of
 8 being a common night walker, if they are satisfied that the prisoner
 9 has reformed, or, for any term during the period of the sentence,
 10 they may bind out such prisoner as an apprentice or servant to any
 11 inhabitant of this commonwealth. Said commissioners and direct-
 12 ors and the master, mistress, apprentice or servant shall have all
 13 the rights and privileges and be subject to all the duties set forth
 14 in chapter one hundred and fifty-five, as if the prisoner had been
 15 bound out by the overseers of the poor; and the relations of the
 16 parties shall not be affected by the age of the person bound. If the
 17 master or mistress is discharged from the contract of service or ap-
 18 prenticeship as provided in said chapter, the person bound shall
 19 be returned to the place of confinement and shall serve out the
 20 original sentence, if any portion thereof is unexpired; but the com-
 21 missioners or directors shall not be liable to the costs of the process
 22 provided in said chapter.

— from house
of correction.
1855, 69, § 2.
G. S. 178, § 18.
1877, 147.
P. S. 220, § 67.
1895, 449, § 16.

1 SECTION 124. A prisoner who has been confined in a prison or
 2 other place of confinement eight days for non-payment of a fine or
 3 of fine and expenses not exceeding five dollars, twenty days for
 4 the non-payment of a fine or fine and expenses not exceeding ten
 5 dollars, thirty days for non-payment of a fine or fine and expenses
 6 not exceeding twenty dollars, shall be discharged.

— of prisoners
committed for
non-payment
of fine.
1842, 59.
G. S. 180, § 7.
1865, 44, § 1.
P. S. 222, § 15.
1899, 226.

1 SECTION 125. The justices of police, district and municipal
 2 courts and trial justices may discharge from the jail persons who
 3 are confined for the non-payment of fine, or of fine and expenses
 4 not exceeding ten dollars, if they are of opinion that such persons
 5 are not able to pay the same, or that it is otherwise expedient;
 6 but no fees shall be allowed to any person for such service.

— of poor
prisoners.
1821, 109.
R. S. 87, § 16.
G. S. 180, § 8.
1866, 284.
P. S. 222, § 16.

Discharge of
poor prisoners.
1799, 7.
1802, 1.
1805, 69.
1833, 9.
R. S. 145, § 3.
1850, 185, §§ 1, 2.
G. S. 180, §§ 6,
9, 10.
P. S. 222, §§ 17-
19.
1882, 201.

SECTION 126. If a poor prisoner has been confined in a jail or house of correction for three months for fine or fine and expenses only, the jailer, master or keeper shall make a report thereof, in the county of Suffolk, to the municipal court of the city of Boston, in the county of Nantucket, to a trial justice and in other counties, to a police or district court. The court or trial justice shall inquire into the truth of the report and may require the jailer or keeper to bring the prisoner into court. If the court or trial justice finds that the report is true, and that the prisoner since his conviction has not had any property, real or personal, with which he could have paid the amount for which he was committed, and that he is held for no other cause, the court or trial justice shall order the sheriff, master or keeper to discharge the prisoner. A person under guardianship may have the benefit of the provisions of this section, although it appears that he has property held under guardianship, if it also appears that such property is beyond his actual control, and if he is discharged, the commonwealth may, in an action of tort brought within one year after the discharge, recover from his guardian, if he has assets, the amount of fine or fine and expenses which remain unpaid.

Acts rendering
permit void.
1884, 152, §§ 1, 4;
255, § 33.
1887, 435, § 2.
1894, 440, § 1.
1895, 252, 504,
§ 2.
1897, 206.
1898, 240, 371.

SECTION 127. The violation by the holder of a permit to be at liberty granted under the provisions of sections one hundred and thirteen, one hundred and fourteen and one hundred and sixteen to one hundred and twenty, inclusive, of any of the terms or conditions of his permit or the violation of any law of this commonwealth shall of itself make his permit void. If the holder of a permit issued under the provisions of section one hundred and fifteen violates any of its terms or conditions or violates any law of the commonwealth before the expiration of his maximum term and is convicted thereof either before or after said expiration, such permit shall thereby become void.

Revocation of
permits.
1880, 218, § 1;
221, § 3; 247, § 2.
1881, 90, § 1.
P. S. 220, § 68;
221, § 52; 222,
§ 20.
1884, 152, § 4;
255, § 33.
1886, 323, § 4.
1887, 435, § 2.
1894, 258, 440,
§ 1.
1895, 252, 504,
§ 2.
1897, 206.
1898, 371.

SECTION 128. The board, commissioners or officer issuing to a prisoner a permit to be at liberty under the provisions of sections one hundred and thirteen and one hundred and seventeen to one hundred and twenty, inclusive, may revoke it at any time previous to its expiration, and the prison commissioners may revoke such permit issued under the provisions of section one hundred and fifteen at any time before the expiration of the maximum term for which it was issued, and shall revoke it when they have knowledge that the person to whom it was issued has been convicted of a crime which is punishable by imprisonment.

Arrest on rev-
ocation or
violation of
permit.
1880, 129, §§ 7,
10; 218, § 2;
221, § 4.
1881, 90, § 2.
P. S. 220, § 70;
221, § 53; 222,
§ 21.
1884, 152, §§ 2, 4;
255, § 34.
1886, 323, § 4.
1887, 292, § 2;
435, § 3.
1888, 192.
1894, 440, § 2.

SECTION 129. The prison commissioners, the state board of charity, the county commissioners, the directors of a workhouse, or, in the county of Suffolk, the penal institutions commissioner of the city of Boston, if a permit to be at liberty issued by them, respectively, to a prisoner under the provisions of sections one hundred and thirteen to one hundred and fifteen, inclusive, and one hundred and seventeen to one hundred and twenty, inclusive, has become void or has been revoked, may issue an order authorizing the arrest of the holder thereof by any officer qualified to serve civil or criminal process in any county and the return of such

holder to the prison from which he was released. The governor, if a permit to be at liberty issued to an habitual criminal under the provisions of section one hundred and sixteen has become void or has been revoked, shall issue his warrant authorizing the arrest of the holder thereof by any officer qualified to serve criminal process, and his return to state prison. A prisoner who has been so returned to his place of confinement shall be detained therein according to the terms of his original sentence. In computing the period of his confinement, the time between his release upon a permit and his return to prison shall not be considered as any part of the term of his original sentence. If, at the time of the revocation of his permit, he is confined in any prison, service of such order shall not be made until his release therefrom, and in such case, the time between the revocation of the permit and his return to the place of his original imprisonment shall not be considered as any part of the term of his original sentence.

1895, 504, § 3.
1897, 272.

SECTION 130. A prisoner whose term expires on Sunday shall be discharged on the preceding Saturday.

1864, 194, § 1.

P. S. 222, § 24.

Discharge on Saturday if term ends on Sunday.

SECTION 131. A prisoner, who at the expiration of his sentence, is in such condition from bodily infirmity or disease as to render his removal impracticable shall be suitably cared for in the prison or other place of confinement until he is in a condition to be removed. The expense of his support, not exceeding three dollars and fifty cents a week, shall be paid by the city or town in which he has a legal settlement, after notice to the overseers thereof, or, if he is a state pauper, to the state board of charity, of the expiration of his sentence and of his condition.

Sick prisoner to be cared for in prison after expiration of sentence.
1853, 388.
G. S. 71, §§ 40-42.
1864, 169.
1874, 170, § 1.
P. S. 222, § 25.

PARDONS.

SECTION 132. In a case in which the governor is authorized by the constitution to grant a pardon, he may, with the advice and consent of the council, and upon the petition of the prisoner, grant it, subject to such conditions, restrictions and limitations as he considers proper, and he may issue his warrant to all proper officers to carry such pardon into effect. Such warrant shall be obeyed and executed, instead of the sentence originally awarded.

Pardons by governor.
Const., pt. 2, c. 2, § 1, art. 8.
1803, 117.
R. S. 142, § 12.
G. S. 177, § 12.
P. S. 218, § 12.
135 Mass. 48.
[1 Op. A. G. 199.]

SECTION 133. If a prisoner who has been pardoned upon conditions to be observed and performed by him violates such conditions, the warden, superintendent or keeper, respectively, of the institution in which the prisoner was confined shall forthwith cause him to be arrested and detained until the case can be examined by the governor and council; and the officer who makes the arrest shall forthwith give notice thereof in writing to the governor and council.

Rearrest of pardoned prisoner.
1837, 181, § 2.
G. S. 177, § 14.
1867, 301, § 1.
P. S. 218, § 13.

SECTION 134. The governor and council shall, upon receiving such notice, examine the case of such prisoner, and, if it appears by his own admission or by evidence that he has violated the condition of his pardon, the governor, with the advice and consent of the

Confinement for unexpired term of sentence.
1837, 181, § 3.
G. S. 177, § 16.
1867, 301, § 2.

1881, 164.
P. S. 218, § 14.
1882, 197.
111 Mass. 443.
135 Mass. 48.

council, shall order him to be remanded and confined for the unexpired term of his sentence, said confinement, if the prisoner is under any other sentence of imprisonment at the time of said order, to begin upon the expiration of such sentence. In computing the period of his confinement, the time between the conditional pardon and subsequent arrest shall not be taken to be part of the term of his sentence. If it appears to the governor and council that he has not broken the conditions of his conditional pardon, he shall be discharged.

Execution of
warrant of
pardon.
R. S. 142, § 13.
G. S. 177, § 17.
P. S. 218, § 15.
[1 Op. A. G.
516.]

SECTION 135. If a prisoner is pardoned or his punishment is commuted, the officer to whom the warrant for such purpose is issued shall, as soon as may be after executing it, make return thereof, signed by him, with his doings thereon, to the secretary's office, and shall file in the office of the clerk of the court in which the offender was convicted an attested copy of the warrant and return and the clerk shall subjoin a brief abstract thereof to the record of the conviction and sentence.

AID TO DISCHARGED PRISONERS.

Aid to dis-
charged pris-
oners. Agents.
1845, 176.
1848, 82.
1852, 213, § 1.
G. S. 180, §§ 64,
66, 68.
1861, 78.
1869, 122.
1871, 302.
1879, 294, § 27.
1881, 179.
P. S. 219, § 26.
1884, 255, § 35.
1887, 315, 395.
1888, 322, § 2.
1895, 383.
1897, 350, § 1.

SECTION 136. The prison commissioners may employ an agent for aiding prisoners who have been discharged from the state prison, at an annual salary of sixteen hundred dollars, payable by the commonwealth, who, in addition to his other duties, shall assist the secretary of the board. They may also employ three other agents, at an annual salary of twelve hundred dollars each, payable in like manner. Said agents shall endeavor to secure employment for prisoners who have been permanently discharged or released on probation from any of the penal institutions under the supervision of the board, advise such discharged prisoners as seek their aid, provide them with clothing, board and tools suitable for their employment and perform such other duties relative to such discharged or released prisoners as the board requires. They shall also obtain information for the board relative to prisoners who have been committed to institutions under its supervision, especially as to the details of their offences and their previous character and history. They may, for that purpose, require of the police authorities any facts in their possession relative to such prisoners if the communication thereof will not, in the opinion of said authorities, be detrimental to the public interest. They shall be reimbursed for the necessary expenses actually incurred by them in the performance of their official duties, after their bills therefor have been approved by the commissioners. The commissioners may expend not more than three thousand dollars annually for the assistance of prisoners discharged from the state prison and not more than five thousand dollars annually for the assistance of prisoners discharged from the Massachusetts reformatory or from any institution to which he was removed from said reformatory.

Female agent.
1879, 294, § 27.
1881, 179.
P. S. 219, § 27.
1886, 177.
1888, 330, 417.
1897, 350, § 2.

SECTION 137. The commissioners may also employ, at an annual salary of one thousand dollars, payable by the commonwealth, a woman as their agent in rendering assistance to female prisoners discharged from the prisons in this commonwealth. She shall

5 counsel and advise them, assist them in obtaining employment
 6 and, under the direction of the commissioners, may render them
 7 pecuniary aid. The commissioners may expend not more than
 8 three thousand dollars annually for the assistance of discharged
 9 female prisoners and may pay therefrom to the Temporary Asylum
 10 for Discharged Female Prisoners such amount as they shall deter-
 11 mine for the support of women charged with crime whose cases are
 12 disposed of without sentence.

1 SECTION 138. The commissioners shall cause an account to be
 2 kept of the money expended by the agents for the necessary ex-
 3 penses of the service required by the two preceding sections, for
 4 correspondence and travel in procuring employment for and furnish-
 5 ing clothing, board and tools to discharged prisoners and for con-
 6 veying them to their homes or places of employment; which, upon
 7 approval by the auditor, shall be paid at the end of each month.

Account of ex-
penditures by
agents.

1845, 176, § 2.
1848, 82, § 2.
1852, 213, § 2.
G. S. 180, § 46.
1879, 294, § 28.
P. S. 219, § 28.

1 SECTION 139. The warden of the state prison may pay from the
 2 treasury of the prison not more than five dollars to any prisoner
 3 leaving the prison who, in the opinion of the warden, by his good
 4 conduct deserves it, or he may, in his discretion, pay it to the
 5 agents appointed under the provisions of section one hundred and
 6 thirty-six, who shall expend for the benefit of such prisoners
 7 what they thus receive, and shall account therefor to the commis-
 8 sioners. A prisoner who leaves the state prison shall be provided
 9 with decent clothing.

Warden may
pay over to
agent money
authorized to
be paid to
prisoner.

1827, 118, § 13.
R. S. 144, § 53.
1849, 148.
1852, 213, § 3.
G. S. 179, § 63;
180, § 67.
1879, 294, § 29.
P. S. 219, § 29;
221, § 42.

1 SECTION 140. The agent for aiding prisoners who have been
 2 discharged from the state prison and the agent for aiding discharged
 3 female prisoners shall annually, on or before the fifteenth day of
 4 October, make full and detailed statements to the commissioners
 5 of their doings for the year ending on the thirtieth day of Septem-
 6 ber, which shall be included by the commissioners in their annual
 7 report.

Annual report
of agents.

1846, 78.
1857, 40.
1858, 46.
G. S. 180, § 68.
1879, 294, § 30.
P. S. 219, § 30.

1 SECTION 141. The county commissioners may provide a pris-
 2 oner who is released from prison on probation with such amount of
 3 money as in their opinion can be wisely used to encourage his ref-
 4 ormation, or they may pay it to a probation officer to be used for
 5 such prisoner.

Aid by county
commission-
ers.

1880, 129, § 9.
P. S. 220, § 71.

1 SECTION 142. The master or keeper of a jail or house of correc-
 2 tion may, with the approval of the county commissioners, expend
 3 such amount, not exceeding ten dollars, in aiding a prisoner dis-
 4 charged from his custody as in his opinion will assist such prisoner
 5 in his endeavor to reform. He may, in his discretion, pay it to the
 6 prisoner, or to some person selected by the master or keeper to be
 7 expended by him in behalf of the prisoner or for providing the pris-
 8 oner with board, clothing, transportation or tools. The amount so
 9 paid by a master or keeper shall be allowed and paid by the county
 10 like other prison expenses.

— by keeper of
jail, etc.

1881, 126.
P. S. 220, § 64.
[1 Op. A. G.
281.]

PART V.

OF THE REVISED LAWS AND THE EXPRESS REPEAL
OF CERTAIN ACTS AND RESOLVES.

CHAPTER 226. — Of the Revised Laws and their Effect.

CHAPTER 227. — Of the Express Repeal of Certain Acts and Resolves.

CHAPTER 226.

OF THE REVISED LAWS AND THEIR EFFECT.

Revised Laws;
how cited;
when to take
effect.R. S. 146, §§ 1, 2.
G. S. 181, §§ 1, 2.
P. S. 223, § 1.

SECTION 1. This act shall not in any citation or enumeration of the statutes be reckoned as one of the acts of the year nineteen hundred and one, but may be designated as the Revised Laws, adding the number of the chapter and section when necessary, and shall take effect from and after the thirty-first day of December in the year nineteen hundred and one.

— to be a con-
tinuation of
former acts.
G. S. 181, § 9.
P. S. 223, § 2.
138 Mass. 593.

SECTION 2. The provisions of the Revised Laws, so far as they are the same as those of existing statutes, shall be construed as a continuation thereof and not as new enactments, and a reference in a statute which has not been repealed to provisions of law which are revised and re-enacted herein shall be construed as applying to such provisions as so incorporated in the Revised Laws.

— repeal by,
not to revive
former acts,
etc.
R. S. 146, §§ 3, 9.

SECTION 3. The repeal of a law by this act shall not revive a law heretofore repealed or superseded, nor an office heretofore abolished.

G. S. 181, § 3.

P. S. 223, § 3.

— repeal by,
not to affect
acts done, etc.
R. S. 146, § 5.
G. S. 181, § 4.
P. S. 223, § 4.
18 Pick. 417, 532.
19 Pick. 578.
20 Pick. 99.
21 Pick. 109, 210.
5 Met. 408.

SECTION 4. The repeal of a law by this act shall not affect any act done, ratified or confirmed, or any right accrued or established, or any action, suit or proceeding commenced or had in a civil case, before the repeal takes effect, but the proceedings in such case shall, when necessary, conform to the provisions of the Revised Laws.

4 Gray, 490.

2 Allen, 49, 496.

3 Allen, 153.

5 Allen, 150.

125 Mass. 316.

— repeal by,
not to affect
penalties or
forfeitures,
except, etc.
R. S. 146, § 6.
G. S. 181, § 5.
P. S. 223, § 5.

SECTION 5. The repeal of a law by this act shall not affect any punishment, penalty or forfeiture incurred under such law, except that any provision of the Revised Laws by which a punishment, penalty or forfeiture is mitigated may be extended and applied to any judgment pronounced after said repeal.

— repeal by,
not to affect
actions com-
menced, etc.

SECTION 6. The repeal of a law by this act shall not affect any action, suit or prosecution pending at the time of the repeal for an

3 offence committed, or for the recovery of a penalty or forfeiture
 4 incurred, under any of the laws repealed, except that the proceed-
 5 ings therein shall, when necessary, conform to the provisions of the
 6 Revised Laws.

R. S. 146, § 7.
 G. S. 181, § 6.
 P. S. 223, § 6.
 1 Allen, 1.

1 SECTION 7. Whoever, when said repeal takes effect, holds an
 2 office under any of the laws repealed shall continue to hold it
 3 according to the tenure thereof unless it is abolished or unless a dif-
 4 ferent provision relative thereto is made by the Revised Laws.

Tenure of office
 preserved.
 R. S. 146, § 7.
 G. S. 181, § 6.
 P. S. 223, § 6.

1 SECTION 8. If a limitation or period of time prescribed in any
 2 of the acts repealed for acquiring a right, barring a remedy or any
 3 other purpose has begun to run, and the same or a similar limita-
 4 tion is prescribed in the Revised Laws, the time of limitation shall
 5 continue to run and shall have like effect as if the whole period
 6 had begun and ended under the operation of the Revised Laws.

Periods of
 limitation to
 continue to
 run.
 R. S. 146, § 7.
 G. S. 181, § 6.
 P. S. 223, § 6.

CHAPTER 227.

OF THE EXPRESS REPEAL OF CERTAIN ACTS AND RESOLVES.

The acts and resolves, and parts of acts and resolves, which are specified in the annexed schedule shall be expressly repealed from and after the thirty-first day of December in the year nineteen hundred and one, subject to all the provisions contained in chapter two hundred and twenty-six: but no implication shall be drawn from such repeal that said acts and resolves were in force until so repealed.

SCHEDULE OF ACTS AND RESOLVES, AND PARTS OF ACTS AND RESOLVES, EXPRESSLY REPEALED.

One Thousand Eight Hundred and Eighty-one.

PUBLIC STATUTES.—An act for consolidating and arranging the General Statutes of the commonwealth.

One Thousand Eight Hundred and Eighty-two.

- CHAPTER 6.—An act to correct certain errors in and to amend the Public Statutes.
 CHAPTER 36.—An act relative to notices in cases of injuries received on highways.
 CHAPTER 41.—An act concerning the appointment of an additional associate justice for the municipal court of the city of Boston.
 CHAPTER 42.—An act relative to the appointment of sealers of weights and measures in cities.
 CHAPTER 43.—An act relating to the death, resignation, absence or disability of the justices of certain municipal courts in the city of Boston.
 CHAPTER 49.—An act providing that when Christmas day occurs on Sunday the day following shall be a legal public holiday.
 CHAPTER 53.—An act for the protection of traps, trawls and seines.
 CHAPTER 54.—An act to amend chapter one hundred and twelve of the Public Statutes, requiring railroad cars to be furnished with certain tools, and for further protection of passengers against fire.
 CHAPTER 55.—An act relating to the publication of notices of petitions for partition of lands.
 CHAPTER 63.—An act to establish the salary of the clerk of the police court of Lowell.
 CHAPTER 73.—An act to provide for the testing of locomotive boilers.
 CHAPTER 75.—An act to regulate sales under power of sale in mortgages.
 CHAPTER 76.—An act relating to personal estate subject to taxation.
 CHAPTER 87.—An act to establish the salary of the clerk of the first district court of Eastern Middlesex.

- CHAPTER 94.—An act to prevent discrimination in freight rates by railroad corporations.
- CHAPTER 95.—An act concerning appeals in the police, district and municipal courts in civil cases.
- CHAPTER 96.—An act fixing the compensation of officers in attendance upon sheriffs' juries.
- CHAPTER 97.—An act to provide for the instruction and exercise of a portion of the volunteer militia in the manual and drill of heavy artillery.
- CHAPTER 98.—An act to provide for the preservation of lobsters.
- CHAPTER 102.—An act concerning the fisheries in Great pond and Job's Neck pond in the town of Edgartown.
- CHAPTER 106.—An act in relation to the taxation of foreign mining, quarrying and oil companies.
- CHAPTER 108.—An act to authorize county commissioners to control travel over bridges constructed or maintained in whole or in part by a county.
- CHAPTER 109.—An act to provide for determining the location of common landing places.
- CHAPTER 110.—An act relating to the accounts of the treasurer and auditor.
- CHAPTER 113.—An act to authorize cities and towns to recover for expense incurred in the support or relief of paupers.
- CHAPTER 127.—An act relating to juvenile offenders.
- CHAPTER 130.—An act regulating the investment of the funds of the commonwealth.
- CHAPTER 131.—An act ceding to the United States jurisdiction over certain land for the fish and fisheries commission.
- CHAPTER 132.—An act relating to the descent of the real estate of illegitimate children.
- CHAPTER 133.—An act relative to the payment of indebtedness by cities and towns.
- CHAPTER 134.—An act concerning the deposit of money in lieu of furnishing sureties in criminal cases.
- CHAPTER 135.—An act providing for appeals from the county commissioners to the board of railroad commissioners in certain cases.
- CHAPTER 139.—An act to permit women to practise as attorneys at law.
- CHAPTER 140.—An act relating to depositions to perpetuate the testimony of witnesses without the commonwealth.
- CHAPTER 141.—An act relating to the distribution of the personal estate of married women.
- CHAPTER 146.—An act to include the town of Wintthrop in the judicial district of the municipal court of the East Boston district.
- CHAPTER 154.—An act authorizing towns and cities to lay out public parks within their limits.
- CHAPTER 156.—An act to establish the salary of the district-attorney for the eastern district.
- CHAPTER 157.—An act to provide for the appointment of an assistant district-attorney for the eastern district.
- CHAPTER 158.—An act relating to the distribution of public documents.
- CHAPTER 162.—An act relating to the fencing of railroads.
- CHAPTER 163.—An act for the protection of forests against fires.
- CHAPTER 164.—An act to define the meaning of the words mayor and aldermen.
- CHAPTER 165.—An act relating to the assessment of taxes on the personal estate of insolvents, joint owners and tenants in common.
- CHAPTER 166.—An act relative to fishing in the Merrimack River.
- CHAPTER 174.—An act authorizing the appointment of additional pilots for ports other than the port of Boston.
- CHAPTER 175.—An act relating to the assessment of taxes upon mortgaged real estate.
- CHAPTER 178.—An act relating to the compensation of the militia.
- CHAPTER 179.—An act relative to parading with arms by associations composed of soldiers.
- CHAPTER 180.—An act defining the powers of mayors of cities to vote as presiding officers.
- CHAPTER 181.—An act relating to indigent and neglected children.
- CHAPTER 194.—An act concerning statistics of divorce.
- CHAPTER 195.—An act enlarging the powers and duties of associations for charitable and other purposes.
- CHAPTER 197.—An act to amend the Public Statutes in relation to conditional pardons.
- CHAPTER 198.—An act to punish prisoners escaping from custody when employed outside of their places of confinement.
- CHAPTER 199.—An act for the better protection of deer.
- CHAPTER 201.—An act relating to the discharge of poor convicts.
- CHAPTER 207.—An act to provide for the surgical treatment of certain prisoners.
- CHAPTER 213.—An act to provide a burial place for prisoners dying in the reformatory prison for women.
- CHAPTER 215.—An act fixing fees of officers for summoning witnesses in criminal cases.
- CHAPTER 216.—An act in relation to assistant harbor masters.
- CHAPTER 217.—An act providing for returns of property held for literary, benevolent, charitable or scientific purposes.
- CHAPTER 218.—An act fixing the payment of costs in appeals for abatement of taxes.
- CHAPTER 220.—An act to prohibit the granting of licenses for the sale of intoxicating liquors on premises within a certain distance of public schools.
- CHAPTER 221.—An act to regulate the inspection and analysis of intoxicating liquors.
- CHAPTER 222.—An act in relation to advertising applications for liquor licenses in the city of Boston.
- CHAPTER 223.—An act relating to the making and entering of decrees of divorce.
- CHAPTER 225.—An act to amend "An act to prevent discrimination in freight rates by railroad corporations."
- CHAPTER 226.—An act in relation to blanks for certain court returns, and to reports of arrests.
- CHAPTER 232.—An act relating to the officers in attendance upon the supreme judicial court in the county of Suffolk.
- CHAPTER 235.—An act in relation to appeals from taxation of costs in civil actions.
- CHAPTER 236.—An act relating to the illegal taking and using of horses and carriages.
- CHAPTER 237.—An act relating to the settlement of titles to real estate.
- CHAPTER 238.—An act to provide for the preparation of tables and indexes relating to the statutes of the present year and subsequent years.
- CHAPTER 241.—An act in relation to transfers and sentences of prisoners.
- CHAPTER 242.—An act to fix the hours of closing premises occupied by common victuallers.

- CHAPTER 244.—An act to authorize the formation of relief societies by the employees of railroad and steamboat corporations.
- CHAPTER 245.—An act relating to the salaries of certain justices and court officers.
- CHAPTER 246.—An act in relation to law library associations.
- CHAPTER 249.—An act relative to the staying or superseding of executions by writs of review.
- CHAPTER 251.—An act relating to co-operative saving fund and loan associations.
- CHAPTER 253.—An act to divide the commonwealth into districts for the choice of representatives in the congress of the United States.
- CHAPTER 255.—An act authorizing towns and cities to provide for the preservation and reproduction of forests.
- CHAPTER 257.—An act to fix the compensation of the assistant clerks, doorkeepers, assistant doorkeepers, postmaster, messengers and pages of the senate and house of representatives.
- CHAPTER 258.—An act relating to the fees for licenses of keepers of intelligence offices, dealers in various articles, and keepers of billiard, pool and sippio rooms and bowling alleys.
- CHAPTER 259.—An act relative to obstructing the view of premises licensed for the sale of intoxicating liquors, and the statements of sureties on bonds.
- CHAPTER 263.—An act relating to the adulteration of foods and drugs.
- CHAPTER 264.—An act relating to costs in civil actions.
- CHAPTER 265.—An act relative to the establishment of railroad corporations.
- CHAPTER 267.—An act in relation to the attendance of witnesses before a board of police commissioners.
- CHAPTER 269.—An act to provide for notice of the place of storage of gunpowder and other explosive compounds.
- CHAPTER 270.—An act for the better protection of children.
- CHAPTER 272.—An act concerning the sale or use of toy pistols and other dangerous articles.
- RES. CHAPTER 15.—Resolve authorizing the use of the state camp-ground at Framingham by the grand army of the republic.
- RES. CHAPTER 56.—Resolve providing for the purchase of paper for the commonwealth.

One Thousand Eight Hundred and Eighty-three.

- CHAPTER 31.—An act relative to fishing in the Merrimack River.
- CHAPTER 32.—An act in relation to railroad fares.
- CHAPTER 41.—An act in relation to the assessment of taxes.
- CHAPTER 47.—An act in relation to extra clerical assistance in the municipal court of the city of Boston.
- CHAPTER 48.—An act to establish the salary of the third clerk in the department of the secretary of the commonwealth.
- CHAPTER 53.—An act relating to the salary of the clerk of the police court of Gloucester.
- CHAPTER 54.—An act relating to the salary of the messenger of the justices of the superior court in the county of Suffolk.
- CHAPTER 55.—An act relating to the printing and distribution of the legislative manual.
- CHAPTER 57.—An act to establish the salary of the clerk of the first district court of Plymouth.
- CHAPTER 61.—An act relative to the fees of witnesses and officers at inquests.
- CHAPTER 62.—An act concerning costs under the trustee process.
- CHAPTER 63.—An act to change the time of holding meetings of the county commissioners in the county of Berkshire.
- CHAPTER 65.—An act relating to the tenure of office of railroad and steamboat police.
- CHAPTER 73.—An act relative to the recording of mortgages of personal property.
- CHAPTER 74.—An act in relation to the taxation of foreign mining, quarrying and oil companies.
- SECTION 1 of CHAPTER 75.—An act relative to the district court of Hampshire and the salary of the justice thereof.
- CHAPTER 77.—An act to prevent the wilful detention of books, newspapers, magazines, pamphlets, or manuscripts of certain libraries.
- CHAPTER 78.—An act to provide for the discharge or temporary release of inmates of institutions for the insane.
- SECTION 2 of CHAPTER 80.—An act providing for a clerk for the district court of Hampshire.
- CHAPTER 81.—An act for the better protection of property of certain libraries.
- CHAPTER 84.—An act permitting municipal officers to authorize manufacturers to ring bells and use whistles and gongs for the benefit of their workmen.
- CHAPTER 91.—An act relating to the duties of assessors of taxes.
- CHAPTER 93.—An act relating to applications for, and the granting of, licenses to sell intoxicating liquors.
- SECTION 3 of CHAPTER 97.—An act providing for a clerk for the second district court of Eastern Middlesex.
- SECTIONS 1 and 2 of CHAPTER 98.—An act relating to the name of co-operative saving fund and loan associations.
- CHAPTER 99.—An act in relation to the custody of the archives of Maine lands.
- CHAPTER 100.—An act requiring municipal or other corporations to make returns of the acceptance or failure to accept certain acts and resolves.
- CHAPTER 102.—An act to punish persons guilty of disorderly conduct on steamboats and other public conveyances.
- CHAPTER 110.—An act relative to the trial of juvenile offenders.
- CHAPTER 111.—An act to establish the salary of the justice of the municipal court of the West Roxbury district of the city of Boston.
- CHAPTER 117.—An act to promote safety at railroad grade crossings.
- CHAPTER 118.—An act authorizing the secretary of the commonwealth to grant licenses for hawking and peddling to persons over seventy years of age.
- CHAPTER 120.—An act to provide for the punishment of persons present at games or sports in common gaming houses.

- CHAPTER 121. — An act to authorize the commissioners on inland fisheries to issue permits for fishing in the Merrimack River.
- CHAPTER 125. — An act amending section one hundred and seventy-nine of chapter one hundred and twelve of the Public Statutes, relating to color blindness of railroad employees.
- CHAPTER 127. — An act defining the meaning of the term "net indebtedness" in certain cases.
- CHAPTER 133. — An act in regard to appeals from orders passed by boards of health.
- CHAPTER 138. — An act relative to notices from local boards of health in cases of small-pox.
- CHAPTER 142. — An act to amend section six of chapter eighty-two of the Public Statutes, relative to recording conveyances of lots in cemeteries, and for other purposes.
- CHAPTER 145. — An act providing for the redemption of real estate sold for non-payment of sewer assessments.
- CHAPTER 148. — An act to provide for the support of the criminal insane by the commonwealth.
- CHAPTER 156. — An act to punish persons who wilfully tear down or deface town meeting warrants and other papers posted in compliance with law.
- CHAPTER 157. — An act relating to the employment of minors and women.
- CHAPTER 168. — An act empowering cities to regulate by ordinance the sale of certain articles by hawkers and peddlers.
- CHAPTER 175. — An act in relation to examinations and trials in criminal cases before a trial justice.
- CHAPTER 183. — An act to amend "An act concerning the transportation of logs and other timber upon the Connecticut River."
- CHAPTER 184. — An act to establish the salary of the secretary of the board of agriculture.
- CHAPTER 187. — An act in relation to boarding houses and boarding house keepers.
- CHAPTER 188. — An act relative to the taking of depositions.
- CHAPTER 195. — An act to enforce the attendance of witnesses before special tribunals.
- CHAPTER 216. — An act in relation to the compensation of assessors, masters in chancery and special masters.
- CHAPTER 217. — An act relating to the employment of prisoners.
- CHAPTER 221. — An act relative to the transmission of electricity for the purpose of lighting.
- CHAPTER 223. — An act granting jurisdiction in equity to the superior court.
- CHAPTER 225. — An act to prevent the use of unlawful measures.
- CHAPTER 232. — An act relating to indigent and neglected children.
- CHAPTER 242. — An act relative to unclaimed dividends in insolvency.
- CHAPTER 243. — An act fixing the responsibility of railroad corporations for negligently causing death of employees.
- CHAPTER 251. — An act to secure better provisions for escape from hotels and certain other buildings, in case of fire.
- CHAPTER 252. — An act to authorize the governor to appoint women who are attorneys-at-law special commissioners to administer oaths and to take depositions and the acknowledgment of deeds.
- CHAPTER 253. — An act to amend chapter forty-nine of the Public Statutes in regard to the payment of damages where persons have separate interests in the property for which damages are claimed.
- CHAPTER 257. — An act relating to the inspection of vinegar.
- CHAPTER 258. — An act providing for the disposition of unclaimed moneys in the hands of receivers of certain insolvent corporations.
- CHAPTER 260. — An act to provide for the removal of wrecks and other obstructions from tide waters.
- CHAPTER 262. — An act giving to a wife the right of interment in a burial lot or tomb owned by her husband.
- CHAPTER 264. — An act relating to the payment by the treasurer of the commonwealth of funds received from public administrators.
- CHAPTER 267. — An act abolishing the office of treasurer and steward of the reformatory prison for women.
- CHAPTER 268. — An act to prohibit certain medical societies from conferring degrees.
- CHAPTER 278. — An act concerning the appointment of superintendent and resident physician at the state almshouse.
- RES. CHAPTER 45. — Resolve providing for the appointment of an agent to prosecute certain claims of the commonwealth against the United States.

One Thousand Eight Hundred and Eighty-four.

- CHAPTER 4. — An act relative to the employment of a second clerk in the bureau of statistics of labor.
- CHAPTER 5. — An act concerning the injury or destruction of railroad signals.
- CHAPTER 8. — An act to establish the salary of the executive clerk of the governor and council.
- CHAPTER 14. — An act to provide for the care and custody of the commonwealth building on Mount Vernon street, in the city of Boston.
- CHAPTER 37. — An act relating to actions for injuries received on the Lord's day.
- CHAPTER 38. — An act to establish the salary of the executive messenger.
- CHAPTER 40. — An act to divide the county of Worcester into two districts for the registry of deeds.
- CHAPTER 42. — An act to authorize towns to grant and vote money for certain memorial purposes.
- CHAPTER 43. — An act in relation to the salaries and duties of certain officers of the reformatory prison for women.
- CHAPTER 45. — An act to provide for an allowance to certain officers in the volunteer militia.
- CHAPTER 60. — An act to repeal the Public Statutes relating to the annual election sermon.
- CHAPTER 64. — An act to prevent the spread of contagious diseases through the public schools.
- CHAPTER 65. — An act to establish the salary of the clerk of the police court of Holyoke.
- CHAPTER 66. — An act relating to clerical assistance in the office of the secretary of, and for lectures before, the board of agriculture.
- CHAPTER 76. — An act to prohibit the sale of firearms and other dangerous weapons to minors.

- CHAPTER 78. — An act to provide for the appointment of trustees by churches or religious societies in certain cases.
- CHAPTER 79. — An act to fix the salary of the secretary of the commonwealth.
- CHAPTER 98. — An act concerning contagious diseases.
- CHAPTER 99. — An act to prohibit the exhibition of deformities for hire.
- CHAPTER 103. — An act to provide for the furnishing of free text-books and school supplies to the pupils of the public schools.
- CHAPTER 112. — An act to fix the salary of the treasurer of Hampden County.
- CHAPTER 116. — An act providing for the appointment of female assistant physicians in state lunatic hospitals.
- CHAPTER 126. — An act in relation to the verification of the accounts of assignees in insolvency.
- CHAPTER 129. — An act to authorize cities and towns to issue notes, bonds and scrip.
- CHAPTER 131. — An act concerning costs and expenses in probate proceedings.
- CHAPTER 132. — An act in relation to the property rights of husband and wife.
- CHAPTER 134. — An act to authorize railroad companies to take land for additional tracks and for other purposes.
- CHAPTER 141. — An act relating to sessions of probate courts which occur on legal holidays or on the day of the national or state election.
- CHAPTER 149. — An act to increase the number of the trustees of the state lunatic hospitals.
- CHAPTER 152. — An act relating to the release of prisoners upon probation.
- CHAPTER 154. — An act to prevent the pollution of sources of water supply.
- CHAPTER 155. — An act relating to the establishment of union county truant schools.
- CHAPTER 158. — An act in relation to the sale of intoxicating liquors.
- CHAPTER 161. — An act to establish a standard measure for cranberries.
- CHAPTER 169. — An act concerning the penalty for fraudulently obtaining entertainment at an inn.
- CHAPTER 170. — An act in relation to attorneys at law.
- CHAPTER 171. — An act to limit the time within which trout, land-locked salmon, and lake trout may be taken.
- CHAPTER 172. — An act to prevent bathing in public ponds.
- CHAPTER 173. — An act relating to harbors and harbor masters.
- CHAPTER 174. — An act to provide for the punishment of embezzlement by officers and servants of voluntary associations.
- CHAPTER 175. — An act to permit adjournment of sales on execution for more than seven days.
- CHAPTER 176. — An act to exempt certain property of horticultural societies from taxation.
- CHAPTER 179. — An act authorizing advances to officers entrusted with the disbursement of public moneys.
- CHAPTER 180. — An act authorizing the formation of corporations to examine and guarantee titles to real estate.
- CHAPTER 185. — An act requiring dog licenses to be recorded in the city or town where the licensed dogs are kept.
- CHAPTER 186. — An act concerning public and private burial places, and lots therein.
- CHAPTER 188. — An act to authorize sheriffs and their deputies to adjourn sessions of district and police courts.
- CHAPTER 191. — An act relating to warrants in criminal cases.
- CHAPTER 193. — An act concerning the order of trials in criminal cases.
- CHAPTER 197. — An act to establish the salary of the clerk of the police court of Chelsea.
- CHAPTER 199. — An act in addition to an act to regulate the taking of fish in North river in the county of Plymouth.
- CHAPTER 203. — An act relative to the appointment of receivers of corporations.
- CHAPTER 204. — An act relating to the compensation of the clerk of the fourth district court of Plymouth.
- CHAPTER 205. — An act relating to the compensation of the special justices of the district court of Hampshire.
- CHAPTER 207. — An act relating to the annual report of the auditor of accounts.
- CHAPTER 208. — An act to establish the salary of the justice of the first district court of Eastern Worcester.
- CHAPTER 209. — An act in relation to the compensation of the sheriff of the county of Dukes County.
- CHAPTER 210. — An act in relation to the better protection of children.
- CHAPTER 211. — An act to establish the salary of the justice of the police court of Brookline.
- CHAPTER 212. — An act for the better protection of lobsters.
- CHAPTER 213. — An act relating to the employment of pilots on board whaling vessels outward bound from the port of New Bedford.
- SECTION 4 of CHAPTER 215. — An act to establish the first district court of Northern Worcester.
- CHAPTER 219. — An act relating to divorce in cases of long and unexplained absence of the libellee.
- CHAPTER 220. — An act to establish the salary of the justice of the first district court of Bristol, holding court in Attleborough.
- CHAPTER 222. — An act requiring railroad companies to use safety complers on freight cars.
- CHAPTER 223. — An act relating to safety appliances in hotels and public buildings.
- CHAPTER 226. — An act in relation to betterments for locating, laying out and constructing streets, ways and public parks.
- CHAPTER 229. — An act relating to the transfer of stock in corporations.
- CHAPTER 230. — An act concerning the volunteer militia.
- CHAPTER 231. — An act to establish the salary of the justice of the district court of Southern Berkshire, and to abolish the office of clerk of said court.
- CHAPTER 234. — An act concerning asylums for the chronic insane.
- CHAPTER 236. — An act to provide for composition with creditors in insolvency.
- CHAPTER 237. — An act in relation to assessments for public improvements.
- CHAPTER 245. — An act concerning the fisheries in waters of the county of Dukes County.
- CHAPTER 247. — An act extending the authority to summon witnesses.
- CHAPTER 252. — An act concerning pilotage.
- CHAPTER 255. — An act to establish a reformatory for male prisoners.
- CHAPTER 258. — An act concerning commitments to the state workhouse.

- CHAPTER 260. — An act for the further relief of bail upon the death of the principal.
- CHAPTER 265. — An act in relation to commitments to imprisonment upon two or more sentences.
- CHAPTER 268. — An act relating to the dismissal of actions in which the real estate of non-residents is attached.
- CHAPTER 269. — An act for the protection of harbors and navigable waters.
- CHAPTER 272. — An act to prevent the building and maintaining of barbed wire fences along or upon public streets and highways.
- CHAPTER 277. — An act to prevent the sale or exchange of property under the inducement that a gift or prize is to be part of the transaction.
- CHAPTER 279. — An act to permit the construction of branch railroads within eight miles from the state house.
- CHAPTER 280. — An act to extend the provisions of chapter fifty-one of the Public Statutes, relating to the assessment of betterments.
- CHAPTER 284. — An act relating to the planting and growing of oysters.
- CHAPTER 285. — An act concerning suits in equity to reach and apply the property of a debtor.
- CHAPTER 286. — An act relating to warrants issued by justices of the peace.
- CHAPTER 289. — An act relating to the adulteration of food and drugs.
- CHAPTER 291. — An act authorizing special administrators to pay the expenses of executors in the proof of wills.
- CHAPTER 293. — An act relative to the proof of equitable liabilities against insolvent estates.
- CHAPTER 294. — An act to fix the times and places of holding probate courts in the county of Hampden.
- CHAPTER 297. — An act providing for the appointment of trustees for the state almshouse and the state workhouse.
- CHAPTER 301. — An act relating to the powers of married women in the disposal of their separate estate by will or deed.
- CHAPTER 302. — An act to regulate the construction and operating of telephonic, telegraphic and other electrical lines.
- CHAPTER 304. — An act relating to practice in the superior court.
- CHAPTER 306. — An act providing for compensation for damages occasioned by the erection of telegraph and telephone lines.
- CHAPTER 307. — An act to prevent the adulteration of vinegar.
- CHAPTER 308. — An act to protect game, and to protect private lands from trespass.
- CHAPTER 310. — An act in relation to the inspection and sale of milk and butter.
- CHAPTER 313. — An act concerning conditional sales of furniture or other household effects.
- CHAPTER 316. — An act relating to service of process in proceedings in equity.
- CHAPTER 317. — An act relative to fishing in the Merrimack River.
- CHAPTER 318. — An act to prevent the use of nets in ponds.
- CHAPTER 320. — An act to improve the civil service of the commonwealth and the cities thereof.
- CHAPTER 321. — An act to provide for the appointment of a medical examiner for the northern district of the county of Franklin.
- CHAPTER 322. — An act to establish a homœopathic hospital for the insane.
- CHAPTER 323. — An act concerning the state reform school.
- CHAPTER 324. — An act relating to pawnbrokers.
- CHAPTER 326. — An act in relation to the payment of money into the treasury of the commonwealth.
- CHAPTER 328. — An act to establish the salary of the governor of the commonwealth.
- CHAPTER 329. — An act establishing the salaries of the clerk of the senate and the clerk of the house of representatives.
- CHAPTER 330. — An act concerning foreign corporations having a usual place of business in this commonwealth.
- CHAPTER 331. — An act in addition to "An act to establish a reformatory for male prisoners."
- CHAPTER 333. — An act establishing the salary of the sergeant-at-arms.
- CHAPTER 334. — An act establishing the salary of the assistant clerk of the senate and the assistant clerk of the house of representatives.
- RES. CHAPTER 72. — Resolve to provide for a topographical survey and map of the commonwealth.

One Thousand Eight Hundred and Eighty-five.

- CHAPTER 7. — An act empowering women to hold the office of assistant register of deeds.
- CHAPTER 24. — An act relative to publication and presentation to the general court of certain petitions.
- CHAPTER 27. — An act relating to the terms of the superior court for Hampden County.
- CHAPTER 29. — An act changing the form of indexes kept in registries of deeds.
- CHAPTER 31. — An act in relation to commissioners to take acknowledgments of deeds in foreign countries.
- CHAPTER 32. — An act relative to the examination of official bonds.
- CHAPTER 35. — An act in relation to removals of prisoners to the state workhouse and to the Massachusetts reformatory.
- CHAPTER 40. — An act in relation to the fees of special justices of district, police and municipal courts.
- CHAPTER 41. — An act relating to the annual financial estimates for appropriations.
- CHAPTER 42. — An act for the relief of the municipal court of the city of Boston.
- CHAPTER 45. — An act relating to writs issued by district, police and municipal courts.
- CHAPTER 48. — An act to determine the time of holding the law terms of the supreme judicial court in the county of Worcester.
- CHAPTER 49. — An act to establish the salary of the standing justice of the municipal court of the Brighton district of the city of Boston.
- CHAPTER 59. — An act relative to special judgments against bankrupt and insolvent debtors.
- CHAPTER 60. — An act to enable any city or town to lease its public buildings or a part thereof to posts of the Grand Army of the Republic.
- CHAPTER 66. — An act to provide for the disposition of forfeited property which has been used in gaming.

- CHAPTER 73.—An act forbidding the sale and use of opium for certain purposes.
- CHAPTER 75.—An act to provide for the service of processes in favor of or against sheriffs.
- CHAPTER 77.—An act to establish the salary of the private secretary of the governor.
- SECTIONS 1 and 3 of CHAPTER 79.—An act to establish the salary of the justice of the municipal court of the Dorchester district of the city of Boston, and to provide a clerk for said court.
- CHAPTER 83.—An act relating to the signing and recording of licenses for the sale of intoxicating liquors in the city of Boston.
- CHAPTER 85.—An act relating to interlocking or automatic signals at railroad crossings.
- CHAPTER 87.—An act to establish the salary of the first clerk in the office of the secretary of the commonwealth.
- CHAPTER 90.—An act to prohibit the sale of spirituous or intoxicating liquors between the hours of eleven at night and six in the morning.
- CHAPTER 91.—An act relating to proceedings before county commissioners at other times than at regular meetings.
- CHAPTER 94.—An act relative to the employment of prisoners in the reformatory prison for women, and to the escape of prisoners from said prison or land appurtenant thereto.
- CHAPTER 98.—An act concerning the preparation, storage and sale of unsafe oils made from coal or petroleum to be used for fuel.
- CHAPTER 106.—An act to require assessors to enumerate and return the number of neat cattle and swine assessed.
- CHAPTER 110.—An act to protect travellers at grade crossings of highways and railroads.
- CHAPTER 118.—An act defining the duties of the board of education relating to the Perkins institution for the blind.
- CHAPTER 119.—An act to establish the salary of the clerk of the board of railroad commissioners.
- CHAPTER 121.—An act relating to co-operative banks.
- CHAPTER 122.—An act relating to the inspection and sale of certain oils.
- CHAPTER 123.—An act relating to surveyors of highways, and to trees in highways.
- CHAPTER 125.—An act to provide for sickness or absence of an officer serving an execution.
- CHAPTER 131.—An act to increase the district police.
- CHAPTER 132.—An act to authorize the justices of the municipal, police and district courts to interchange services.
- CHAPTER 133.—An act to prevent the wilful defacing and misuse of milk cans.
- SECTION 1 of CHAPTER 134.—An act authorizing the superior court to hold sessions by adjournment at Brockton in the county of Plymouth.
- CHAPTER 135.—An act allowing special and trial justices to receive fees for taking bail.
- CHAPTER 136.—An act relating to recognizance of witnesses in certain cases.
- CHAPTER 137.—An act to establish the salary of the clerk of the municipal court of the city of Boston for criminal business, and to provide an additional assistant clerk for said court.
- CHAPTER 141.—An act in relation to summoning of witnesses.
- CHAPTER 147.—An act relating to rent of armories.
- CHAPTER 149.—An act relating to the jurisdiction of municipal, district and police courts in cases concerning the inspection and sale of milk.
- CHAPTER 150.—An act to prevent the adulteration of vinegar.
- SECTION 3 of CHAPTER 155.—An act to establish the police court of the city of Brockton.
- CHAPTER 157.—An act providing for the improvement of public grounds in towns.
- SECTION 2 of CHAPTER 161.—An act relating to the purchase and sale of books by school committees.
- CHAPTER 164.—An act concerning the compensation of the accountant of the board of railroad commissioners.
- CHAPTER 167.—An act in relation to the bonds of public warehousemen.
- CHAPTER 168.—An act to establish the salary of the district-attorney for the middle district.
- CHAPTER 169.—An act exempting from taxation the property of certain persons though owned by such persons jointly with others.
- CHAPTER 176.—An act in relation to the better protection of wives and children.
- CHAPTER 180.—An act to establish the salary of the clerk of the second district court of Eastern Middlesex.
- CHAPTER 183.—An act relating to life and casualty insurance on the assessment plan.
- CHAPTER 189.—An act authorizing cities and towns to entrust certain appropriations to posts of the Grand Army of the Republic for disbursement.
- CHAPTER 190.—An act requiring clerks of towns and cities to keep indexes of instruments recorded.
- CHAPTER 191.—An act concerning the May term of the superior court for the county of Essex.
- CHAPTER 194.—An act to promote the abolition of grade crossings by railroads and highways.
- CHAPTER 195.—An act to establish the salaries of the auditor of the commonwealth and of the first clerk in the auditor's department.
- CHAPTER 196.—An act authorizing cities and towns to license skating rinks.
- CHAPTER 197.—An act to authorize the selectmen of towns to make rules for the regulation of carriages and other vehicles.
- CHAPTER 205.—An act relating to clerical assistance in the office of the register of probate and insolvency for the county of Suffolk.
- CHAPTER 210.—An act to authorize the payment of checks, demand drafts, and savings bank orders, in case of the death of the drawer before payment.
- CHAPTER 211.—An act requiring cities and towns to give certain notices concerning state poor supported by them.
- CHAPTER 216.—An act prohibiting the sale or delivery of intoxicating liquors on election days.
- CHAPTER 220.—An act relating to licenses to plant, grow and dig oysters, and to the taking of scallops.
- CHAPTER 223.—An act to provide for the punishment of fraudulent agents, clerks, servants and officers of persons, firms and corporations.
- CHAPTER 224.—An act in relation to the payment of the salaries of the board of railroad commissioners, of the clerk and the accountant of said board, and of the inspector and assayer of liquors.
- CHAPTER 225.—An act to protect persons using public libraries from disturbance.
- CHAPTER 235.—An act relating to legal advertisements.

- CHAPTER 236. — An act creating the ambulance corps of the Massachusetts volunteer militia.
- CHAPTER 237. — An act in amendment of sections five and six of chapter one hundred and twenty-six of the Public Statutes relating to joint tenancy.
- CHAPTER 238. — An act relating to the taxation of telephone companies.
- CHAPTER 240. — An act authorizing the formation of corporations for making, selling and distributing gas for heating, cooking, chemical and mechanical purposes.
- CHAPTER 250. — An act to establish the salary of the second assistant clerk of the superior court for civil business in the county of Suffolk.
- CHAPTER 254. — An act relating to expenses incurred by officers in the service of precepts in criminal cases.
- CHAPTER 255. — An act relating to the powers of married women in the disposal of their separate estate by will or deed.
- CHAPTER 256. — An act providing for the enforcement of an act for the protection of lobsters.
- CHAPTER 258. — An act in relation to the sale of real estate by guardians at private or public sale.
- CHAPTER 260. — An act providing for granting administration without notice in certain cases.
- CHAPTER 263. — An act to establish the salary of the treasurer and receiver-general.
- CHAPTER 265. — An act authorizing the formation of corporations for the purpose of cremating the bodies of the dead.
- CHAPTER 267. — An act to prevent discrimination by telephone companies.
- CHAPTER 274. — An act relating to the bonds of administrators of intestate estates and of administrators with the will annexed.
- CHAPTER 276. — An act in relation to the distribution of estates of intestates.
- CHAPTER 277. — An act to establish the salaries of the commissioners of the counties of Essex, Middlesex and Norfolk.
- CHAPTER 278. — An act to amend chapter eighty-two of the Public Statutes relating to cemeteries and burials.
- CHAPTER 282. — An act respecting notices forbidding the sale of intoxicating liquors.
- CHAPTER 283. — An act relating to the settlement of titles to real estate.
- CHAPTER 286. — An act to establish the salary of the clerk of the first district court of northern Worcester.
- CHAPTER 288. — An act concerning the great seal of the commonwealth.
- CHAPTER 289. — An act concerning the issuing of warrants in bastardy cases.
- CHAPTER 291. — An act providing for the appointment of official stenographers for the superior court.
- CHAPTER 292. — An act in relation to the licensing of dogs.
- CHAPTER 293. — An act in relation to the partition of lands by probate courts.
- CHAPTER 299. — An act requiring notice of assessments of betterments to be given to the party to be charged thereby.
- CHAPTER 302. — An act in relation to the rights of the widow and family of a deceased person in his family burial lot.
- CHAPTER 303. — An act in relation to trespass upon land appurtenant to prisons and to the disturbance of such institutions.
- CHAPTER 304. — An act relating to clerical assistance in the office of the register of probate and insolvency in the county of Middlesex.
- CHAPTER 305. — An act concerning obscene publications.
- CHAPTER 307. — An act in relation to vacancies in boards of health.
- CHAPTER 309. — An act authorizing cities and towns to license groves to be used for picnics and other lawful amusements.
- CHAPTER 310. — An act relating to change of business by corporations.
- CHAPTER 312. — An act to limit municipal debt of and the rate of taxation in cities.
- CHAPTER 314. — An act to establish a board of gas commissioners.
- SECTION 1 of CHAPTER 316. — An act to punish persons making discrimination in public places on account of race or color.
- CHAPTER 319. — An act to provide paper for the superintendent of the Massachusetts reformatory for certain printing for departments of the state government.
- CHAPTER 320. — An act to provide for the removal of insane prisoners from the Massachusetts reformatory.
- CHAPTER 322. — An act to increase the criminal jurisdiction of district and police courts.
- CHAPTER 332. — An act requiring physiology and hygiene to be taught in the public schools.
- CHAPTER 334. — An act to authorize the railroad commissioners to forbid or regulate the sounding of locomotive whistles in certain cases.
- CHAPTER 339. — An act concerning hospital treatment for certain persons subject to dipsomania or habitual drunkenness.
- CHAPTER 342. — An act relating to buying and selling pools or registering bets.
- CHAPTER 344. — An act in relation to the conservation of the Connecticut River.
- CHAPTER 345. — An act in relation to naturalization.
- CHAPTER 352. — An act in relation to the inspection and sale of milk and butter.
- CHAPTER 353. — An act relating to composition with creditors in insolvency.
- CHAPTER 355. — An act to secure a fair and equal valuation throughout the commonwealth of property subject to taxation.
- CHAPTER 356. — An act to authorize trial justices to impose sentences to the Massachusetts reformatory.
- CHAPTER 358. — An act relating to the liability of innholders.
- CHAPTER 359. — An act relating to the disposition of cases for the violation of the laws relating to the sale of intoxicating liquors.
- CHAPTER 365. — An act in relation to the punishment of persons committing offences named in sections twenty-nine and forty-two of chapter two hundred and seven of the Public Statutes, or convicted of a third offence of drunkenness within one year.
- CHAPTER 375. — An act relating to the penalty for drunkenness.
- CHAPTER 376. — An act to provide for the disposition of legacies due to persons whose residence is unknown.

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CHAPTER 385. — An act providing for the care of certain insane persons.

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CHAPTER 28. — An act to permit the sheriff of the county of Nantucket to retain to his own use all fees received by him for the service of processes.

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CHAPTER 36. — An act to amend section eleven of chapter one hundred and forty-five of the Public Statutes relating to marriage.

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CHAPTER 74. — An act to establish the number of medical examiners and the districts of the same in the county of Plymouth.

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CHAPTER 105. — An act to enable the quartermaster-general to require annual returns of loans of state military property and to adjust all accounts relating to the same.

CHAPTER 106. — An act to fix the salary of the clerk of the district court of Hampshire.

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CHAPTER 124. — An act to establish the salary of the clerk of the municipal court of the Dorchester district of the city of Boston.

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- CHAPTER 167. — An act to establish the salary of the clerk of the first district court of Eastern Middlesex.
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- CHAPTER 174. — An act relating to the annual collection of statistics of manufactures.
- CHAPTER 175. — An act to establish the salary of the inspector and assayer of liquors.
- CHAPTER 177. — An act to provide for the assistance of women charged with crime whose cases are disposed of without sentence.
- CHAPTER 179. — An act to provide for the transportation of shipwrecked seamen in certain cases.
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- CHAPTER 197. — An act in relation to the instruction of prisoners in the state prison.
- CHAPTER 203. — An act to amend section one of chapter three hundred and forty-five of the acts of the year eighteen hundred and eighty-five relating to naturalization.
- CHAPTER 207. — An act for the better protection of public records.
- CHAPTER 209. — An act authorizing corporations to issue special stock to be held by their employees only.
- CHAPTER 210. — An act to extend the duration of the lien of assessments for main drains or common sewers.
- CHAPTER 214. — An act providing for publishing reports of capital trials.
- CHAPTER 216. — An act relative to the appointment of a law clerk as an assistant in the attorney-general's department.
- CHAPTER 219. — An act to provide a building for the chronic insane at the state workhouse at Bridgewater.
- CHAPTER 223. — An act relative to the issuing of process by the clerks of certain courts.
- CHAPTER 224. — An act relating to commitments for contempt of court.
- CHAPTER 226. — An act in relation to the care of jails and houses of correction.
- CHAPTER 230. — An act in relation to the returns of foreign mining, quarrying, and oil companies.
- CHAPTER 231. — An act in relation to the exemption of the property of certain literary and other associations from taxation.
- CHAPTER 233. — An act relating to sureties on probate bonds.
- CHAPTER 234. — An act for the protection of fish in a portion of the county of Dukes County.
- CHAPTER 237. — An act to establish the salaries of the adjutant-general and the first clerk in the department of the adjutant-general.
- CHAPTER 238. — An act to establish the salary of the second clerk in the office of the secretary of the commonwealth.
- CHAPTER 239. — An act in relation to the Protestant Episcopal and Reformed Episcopal churches.
- CHAPTER 245. — An act to authorize the release of estates of tenancy by curtesy by the guardian of an insane married man.
- CHAPTER 247. — An act in relation to the service of warrants and other criminal process.
- SECTION 2 of CHAPTER 248. — An act relative to proceedings for violations of the terms and conditions of leases of great ponds.
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- CHAPTER 251. — An act to establish the salaries of the county commissioners of Worcester, Bristol and Plymouth counties.
- CHAPTER 256. — An act to apportion representatives to the several counties.
- CHAPTER 257. — An act in relation to office hours in the department of the treasurer and receiver-general.
- CHAPTER 258. — An act to amend chapter seventy-two of the Public Statutes relating to public warehouse receipts.
- CHAPTER 259. — An act to provide for returns of certificates of damage by dogs, and to change the time for paying over the money received for licenses.
- CHAPTER 263. — An act to provide for a state board of arbitration for the settlement of differences between employers and their employees.
- CHAPTER 267. — An act in relation to the fees and expenses of agents appointed by the governor to demand of the authorities of other states offenders fleeing from justice.
- CHAPTER 270. — An act in relation to taxation of telephone companies.
- CHAPTER 275. — An act to establish the salary of the secretary of the board of commissioners of prisons.
- CHAPTER 276. — An act for the better preservation of birds and game.
- CHAPTER 281. — An act to permit a defendant in an action at law to require adverse parties claiming funds in his hands to interplead.
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- CHAPTER 290. — An act in relation to the schedules required to be furnished by an insolvent debtor to the messenger.
- CHAPTER 296. — An act for the better protection of forests from fires.
- CHAPTER 298, except SECTION 11. — An act concerning the Massachusetts school for the feeble-minded.
- CHAPTER 299. — An act relating to licenses to plant, grow and dig oysters, and extending the time in which oysters may be taken.
- CHAPTER 305. — An act concerning the punishment for rape.
- CHAPTER 307. — An act to establish the salaries of the justice and clerk of the police court of Lowell.
- CHAPTER 313. — An act relating to the tenure of office of teachers.
- CHAPTER 317. — An act in relation to the inspection and sale of imitation butter.
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- CHAPTER 319. — An act concerning the commitment and custody of insane persons.
- CHAPTER 322. — An act to amend section ninety-three of chapter one hundred and fifty-seven of the Public Statutes relating to matters avoiding discharge in insolvency.
- CHAPTER 323. — An act concerning sentences to the Massachusetts reformatory and the terms of imprisonment therein.

- CHAPTER 328. — An act providing for the punishment of embezzlement of property of voluntary associations.
- CHAPTER 329. — An act to punish the crime of seduction and other acts of unlawful sexual intercourse.
- CHAPTER 330. — An act relating to indigent and neglected children.
- CHAPTER 332. — An act to authorize the governor and council to employ counsel to assist in the defence of actions brought to recover national bank taxes paid to a city or town.
- SECTION 2 of CHAPTER 333. — An act to provide a clerk for the district court of Southern Berkshire.
- CHAPTER 334. — An act establishing the salaries of the clerks in the department of the treasurer and receiver-general.
- CHAPTER 337. — An act to authorize street railway companies to use the cable system as a motive power.
- CHAPTER 338. — An act to divide the commonwealth into forty districts for the choice of senators.
- CHAPTER 340. — An act concerning the keeping of dogs known as bloodhounds.
- CHAPTER 342. — An act in relation to procuring unlawful or fraudulent decrees of divorce.
- CHAPTER 346. — An act in relation to gas companies.
- CHAPTER 348. — An act to divide the commonwealth into eight districts for the choice of councillors.
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- CHAPTER 26. — An act to establish the salary of the third clerk in the office of the secretary of the commonwealth.
- CHAPTER 30. — An act to establish the salary of the second clerk in the department of the auditor of the commonwealth.
- CHAPTER 33. — An act in relation to the return day of trustee writs issued by trial justices.
- CHAPTER 36. — An act relating to naturalization returns.
- CHAPTER 39. — An act relating to clerical assistance in the office of the register of probate and insolvency in Worcester County.
- CHAPTER 43. — An act providing for the disposition of useless records, schedules and papers accumulating in the bureau of statistics of labor.
- CHAPTER 50. — An act relating to land damages in the counties of Nantucket and Dukes County.
- CHAPTER 53. — An act to regulate the disposition of liquors forfeited to the commonwealth.
- CHAPTER 57. — An act to establish the salary of the county treasurer of Middlesex County.
- CHAPTER 58. — An act to establish the salary of the sheriff of the county of Berkshire.
- CHAPTER 61. — An act to establish the salaries of the justice and clerk of the district court of Northern Berkshire.
- CHAPTER 63. — An act relating to sessions of the probate court for the county of Plymouth.
- CHAPTER 67. — An act to prevent persons from unlawfully using or wearing the insignia of the Military Order of the Loyal Legion of the United States or of the Grand Army of the Republic.
- CHAPTER 74. — An act relating to the fees of official stenographers.
- CHAPTER 83. — An act to establish the salary of the executive clerk of the governor and council.
- CHAPTER 86. — An act in relation to the assessment of taxes.
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- CHAPTER 97. — An act to establish the salary of the district attorney for the western district.
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- CHAPTER 105. — An act to protect the fisheries in the tributaries of Plum Island Bay.
- CHAPTER 110. — An act in relation to the accounts of collectors of taxes.
- CHAPTER 112. — An act to establish the salary of the clerk of courts for the county of Dukes County.
- CHAPTER 116. — An act to fix the compensation of the doorkeepers, assistant doorkeepers, postmaster, messengers and pages of the senate and house of representatives.
- CHAPTER 117. — An act to establish the salary of the clerk of the police court of Chelsea.
- CHAPTER 118. — An act relative to furnishing to cities and towns the index-digest of Massachusetts reports.
- CHAPTER 123. — An act to amend chapter two hundred and ninety-eight of the acts of the year eighteen hundred and eighty-six entitled "An act concerning the Massachusetts school for the feeble-minded."
- CHAPTER 124. — An act relating to assessing betterments on highways.
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- CHAPTER 127. — An act to establish the salaries of the district police.
- CHAPTER 128. — An act to more clearly define the duties of the sergeant-at-arms and to establish the salaries of certain of his appointees and to provide for their proper designation.
- CHAPTER 135. — An act relating to the licensing of dogs in the city of Boston.
- CHAPTER 137. — An act to establish a board of registration in dentistry.
- CHAPTER 143. — An act to punish the obtaining by false pretences of certificates of registration or transfers of such registrations, and the giving of false pedigrees of cattle and other animals.
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- CHAPTER 156. — An act to establish the salary of the officer in attendance at the sessions of the probate court and the court of insolvency in the county of Suffolk.
- CHAPTER 159. — An act to establish the salary of the county treasurer of Hampshire County.
- CHAPTER 160. — An act to establish the salaries of the district attorney, the assistant district attorneys and the clerk of the district attorney, for the Suffolk district.
- CHAPTER 162. — An act in relation to the erection and maintenance of guide posts at crossings and forks of highways.
- CHAPTER 163. — An act to establish the salaries of the justices of the municipal court of the city of Boston.
- CHAPTER 164. — An act to establish the salary of the sheriff of Essex County.
- CHAPTER 170. — An act relating to annual meetings and reports of the trustees of state lunatic hospitals.

- CHAPTER 171. — An act to establish the salary of the justice of the police court of Springfield.
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- CHAPTER 175. — An act to establish the salary of the clerk of the municipal court of the Charlestown district of the city of Boston.
- CHAPTER 180. — An act to establish the salary of the justice of the police court of Somerville.
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- CHAPTER 191. — An act extending the time for which railroad corporations may issue bonds.
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- CHAPTER 197. — An act concerning the use of gill nets or set nets within one half mile of the shores of the town of Mattapoisett.
- CHAPTER 199. — An act to establish the salary of the first assistant clerk of the superior court for civil business in the county of Suffolk.
- CHAPTER 204. — An act to establish the rates of pilotage for the ports of Salem and Beverly.
- CHAPTER 206. — An act to prohibit the unlicensed selling, distributing or dispensing of intoxicating liquors by clubs.
- CHAPTER 208. — An act to establish the salary of the clerk of the police court of Lawrence.
- CHAPTER 209. — An act to establish the salary of the assistant state librarian and clerk of the board of education.
- CHAPTER 211. — An act to establish the salaries of the county commissioners of Hampshire county.
- CHAPTER 214. — An act to amend and codify the statutes relating to insurance.
- CHAPTER 216. — An act relating to co-operative banks.
- CHAPTER 218. — An act to amend section ten of chapter one hundred and three of the Public Statutes relating to the duties and powers of inspectors of factories and public buildings.
- CHAPTER 221. — An act to establish the salary of the messenger to the governor and council.
- CHAPTER 225. — An act requiring annual returns from certain corporations.
- CHAPTER 226. — An act relating to the overlay of taxes.
- CHAPTER 227. — An act to establish the salary of the clerk of the district court of Southern Berkshire.
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- CHAPTER 231. — An act in reference to the office of fire marshal of the city of Boston.
- CHAPTER 232. — An act to establish the salary of the inspector and assayer of liquors.
- CHAPTER 234, except SECTION 3. — An act to provide for the appointment of police matrons in cities, and for the establishment of a house of detention for women in the city of Boston.
- CHAPTER 239. — An act to change the name of the temporary asylum for the chronic insane at Worcester.
- CHAPTER 243. — An act to authorize the payment of fees to deputy sheriffs and constables for attendance at the probate courts and courts of insolvency.
- CHAPTER 245. — An act to establish the salary of the clerk of the secretary of the state board of agriculture.
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- CHAPTER 256. — An act to increase the district police force.
- CHAPTER 263. — An act to make the first Monday of September, known as labor's holiday, a legal holiday.
- CHAPTER 264. — An act to change the name of the state workhouse at Bridgewater.
- CHAPTER 265. — An act to establish the salary of the clerk of the police court of Somerville.
- CHAPTER 269. — An act to amend an act to provide for a state board of arbitration for the settlement of differences between employers and their employees.
- CHAPTER 270. — An act to extend and regulate the liability of employers to make compensation for personal injuries suffered by employees in their service.
- SECTION 2 of CHAPTER 274. — An act providing for a clerk for the municipal court of the West Roxbury district of the city of Boston.
- CHAPTER 276. — An act to further amend section twenty-three of chapter one hundred and four of the Public Statutes in relation to the authority of inspectors of factories and public buildings.
- CHAPTER 277. — An act to enable public warehousemen to collect their charges upon property deposited with them by the sale thereof.
- CHAPTER 283. — An act concerning taxation of insurance companies.
- CHAPTER 286. — An act concerning partition of lands.
- CHAPTER 289. — An act in relation to the compensation of arbitrators appointed under chapter one hundred and eighty-eight of the Public Statutes.
- CHAPTER 290. — An act limiting the right of married women to dispose of real estate by will.
- CHAPTER 291. — An act enlarging the duties and regulating the salary of the clerk of the supreme judicial court in the county of Suffolk.
- CHAPTER 292. — An act authorizing the commissioners of prisons to remove prisoners from the Massachusetts reformatory to the state farm at Bridgewater, and giving the state board of lunacy and charity authority over prisoners so removed.
- CHAPTER 293. — An act concerning the jurisdiction of municipal, police and district courts in certain criminal cases.
- CHAPTER 295. — An act relating to the awards of special commissions in the alterations of crossings of highways or townways and railroads.
- CHAPTER 298. — An act to provide for the appointment of a pilot for Cohasset harbor.
- CHAPTER 300. — An act relating to the trapping or snaring of ruffed grouse, hares or rabbits.
- CHAPTER 307. — An act to provide for licensing dogs kept for breeding purposes.
- CHAPTER 310. — An act relating to medical examiners.
- CHAPTER 314. — An act for the protection of lobsters.

- CHAPTER 315.—An act to provide for the employment by the commissioners of prisons of additional agents to aid discharged prisoners.
- CHAPTER 318.—An act to establish the salary of the clerk of the police court of Holyoke.
- CHAPTER 320.—An act to prohibit advertising the business of procuring divorces.
- CHAPTER 323.—An act relative to the rights of owners of real estate in the matter of the granting of liquor licenses.
- CHAPTER 327.—An act to provide an assistant clerk for the municipal court of the South Boston district, in the city of Boston, and to establish the salary of said assistant clerk, so far as it establishes the salary of said assistant clerk.
- CHAPTER 332.—An act to enlarge the jurisdiction of the superior and probate courts.
- CHAPTER 334.—An act relating to the examination of railroad bridges.
- CHAPTER 336.—An act to provide offices for agents for aiding discharged prisoners.
- CHAPTER 338.—An act relative to the abatement of certain nuisances by boards of health.
- CHAPTER 339.—An act to prohibit the illicit conveyance of articles into or from the Massachusetts reformatory.
- CHAPTER 340.—An act relating to voluntary assignments by insolvent persons.
- CHAPTER 341.—An act to establish the salaries of the superintendent and the clerk of the reformatory prison for women.
- CHAPTER 342.—An act to fix the salaries of the deputy tax commissioner and commissioner of corporations and the persons employed in his department.
- CHAPTER 345.—An act authorizing cities to appropriate money for the enforcement of the provisions of law relating to civil service.
- CHAPTER 346.—An act concerning commitments and transfers of the insane.
- CHAPTER 347.—An act in relation to a change of venue in civil actions.
- CHAPTER 348.—An act in relation to fences and other structures erected to annoy, and for the abatement of nuisances.
- CHAPTER 355.—An act in relation to the removal of subordinate officers of the state prison.
- CHAPTER 362.—An act relating to the heating of passenger cars on railroads.
- CHAPTER 364.—An act concerning the tenure of office of certain officers.
- CHAPTER 365.—An act to prevent the sale of intoxicating liquor in cases of riot or great public excitement.
- CHAPTER 366.—An act in relation to the increase of the capital stock of street railway companies.
- CHAPTER 367.—An act concerning the transfer and removal of pauper inmates of state charitable institutions and lunatic hospitals.
- CHAPTER 373.—An act extending the provisions of the Public Statutes relating to the taxable valuation of vessels engaged in the foreign carrying trade.
- CHAPTER 375.—An act to provide for the release from and the return to county prisons of prisoners transferred thereto from the Massachusetts reformatory.
- CHAPTER 380.—An act to authorize the suppression of common nuisances described in section six of chapter one hundred and one of the Public Statutes.
- CHAPTER 382.—An act constituting the board of gas commissioners a board of gas and electric light commissioners.
- CHAPTER 383.—An act relating to the practice in civil actions in the supreme judicial and superior courts.
- CHAPTER 385.—An act to authorize gas companies to furnish electric light.
- SECTION 3 OF CHAPTER 391.—An act to further regulate the observance of the Lord's day.
- CHAPTER 392.—An act relative to the forfeiture of licenses issued under provisions of chapter one hundred of the Public Statutes.
- CHAPTER 393.—An act relative to the fencing of canals.
- CHAPTER 395.—An act to provide for aiding prisoners discharged from the Massachusetts reformatory.
- CHAPTER 401.—An act relating to the enforcement of the law for placing pauper children in families.
- CHAPTER 404.—An act to provide for the incorporation of churches.
- CHAPTER 406.—An act providing for the seizure of implements and furniture used in the illegal selling of intoxicating liquors.
- CHAPTER 407.—An act to provide for the levy of executions on real estate when such levy is suspended by reason of a prior attachment.
- CHAPTER 414.—An act relative to evidence in certain prosecutions for violation of the liquor laws.
- CHAPTER 418.—An act relating to conditions and restrictions on real estate.
- CHAPTER 419.—An act relative to the assessment and collection of taxes by religious societies.
- CHAPTER 422.—An act to prevent illegal peddling and begging by certain minors.
- CHAPTER 426.—An act to authorize the use of the reformatory prison for women at Sherborn and the state industrial school for girls at Lancaster for the punishment of female offenders convicted in the courts of the United States.
- CHAPTER 430.—An act authorizing railroad corporations to change their locations for the purpose of improving the alignment of their roads.
- CHAPTER 433.—An act relating to the employment of minors who cannot read and write in the English language.
- CHAPTER 435.—An act to provide for the punishment of habitual criminals.
- CHAPTER 436.—An act to punish unnatural and lascivious acts.
- CHAPTER 438.—An act to provide for the appointment of a controller to audit the accounts of county officers, officers of inferior courts and trial justices.
- CHAPTER 440.—An act to prevent the removal to the state almshouse of sick paupers.
- SECTIONS 3 and 4 OF CHAPTER 441.—An act in aid of the hospital cottages for children in Baldwinville in the town of Templeton.
- CHAPTER 442.—An act to amend chapter one hundred and sixty-two of the Public Statutes in relation to the examination and arrest of poor debtors.
- CHAPTER 445.—An act concerning picnics and other lawful gatherings in licensed groves.

CHAPTER 446.—An act concerning the admission of children under thirteen years to certain shows and places of amusement.

CHAPTER 447.—An act relating to the labor of the prisoners in the state prison, reformatories and houses of correction.

CHAPTER 449.—An act to prevent fraud in the sale of land.

One Thousand Eight Hundred and Eighty-eight.

CHAPTER 1.—An act to provide additional clerical assistance for the general court.

CHAPTER 22.—An act to define the meaning of the words "contract for the labor of prisoners," as used in chapter four hundred and forty-seven of the acts of the year eighteen hundred and eighty-seven.

CHAPTER 41.—An act to establish the salary of the secretary of the civil service commission.

CHAPTER 46.—An act to amend section twenty-four of chapter one hundred and ninety-two of the Public Statutes relating to the enforcement of certain liens upon personal property.

CHAPTER 49.—An act relating to sentences of imprisonment in the Massachusetts reformatory.

CHAPTER 50.—An act to establish the salary of the justice of the central district court of Worcester.

CHAPTER 54.—An act to establish the salary of the clerk of the district court of East Norfolk.

CHAPTER 55.—An act to establish the salary of the clerk of the police court of Haverhill.

CHAPTER 58.—An act to increase the number of associate justices of the superior court.

SECTION 2 of CHAPTER 60.—An act providing for a clerk for the police court of Brookline.

CHAPTER 65.—An act to establish the salaries of the county commissioners of Franklin County.

CHAPTER 67.—An act to amend section ninety-nine of chapter one hundred and fifty-seven of the Public Statutes, relating to allowances to insolvent debtors.

CHAPTER 69.—An act concerning admissions to the asylum for insane at Tewksbury.

CHAPTER 84.—An act to amend section five of chapter two hundred and fourteen of the acts of the year one thousand eight hundred and eighty-seven, relating to clerical assistance in the insurance department.

CHAPTER 86.—An act to amend an act relating to safety appliances in hotels and public buildings.

CHAPTER 88.—An act to establish the salary of the clerk of the district court of Western Hampden.

CHAPTER 89.—An act to establish the salary of the clerk of the district court of Northern Berkshire.

CHAPTER 94.—An act to amend section sixteen of chapter one hundred and fifty of the Public Statutes relating to appeals.

CHAPTER 95.—An act to establish the salary of the sheriff of the county of Middlesex.

CHAPTER 105.—An act providing for the registration and licensing of plumbers in the cities and towns of the commonwealth.

CHAPTER 110.—An act to establish the salary of the justice of the police court of Lawrence.

CHAPTER 114.—An act to amend section nineteen of chapter fifty-two of the Public Statutes, relating to notices in, and jurisdiction of, cases of injuries received on highways.

CHAPTER 115.—An act to establish the salaries of the first and second clerks of the bureau of statistics of labor.

CHAPTER 116.—An act to amend section thirteen of chapter one hundred and six of the Public Statutes, relating to the formation of certain corporations.

CHAPTER 134.—An act to authorize the incorporation of labor or trade organizations.

CHAPTER 135.—An act to amend sections ten and eleven of chapter two hundred and three of the Public Statutes relating to the penalties for the offence of burglary.

CHAPTER 139.—An act to regulate the granting of liquor licenses to be exercised in dwelling houses.

CHAPTER 141.—An act to amend section thirty-one of chapter two hundred and fourteen of the acts of the year eighteen hundred and eighty-seven, relating to the insurance of mechanic's tools.

CHAPTER 148.—An act in relation to affidavits of notice of appointment and sales of real estate by administrators and executors.

CHAPTER 151.—An act in relation to actions upon fire insurance policies.

CHAPTER 153.—An act providing for a third assistant clerk of the superior court, civil session, of the county of Suffolk.

CHAPTER 154.—An act to amend section thirty-three of chapter thirteen of the Public Statutes, relative to the returns for taxation of insurance companies.

CHAPTER 155.—An act to amend an act to extend and regulate the liability of employers to make compensation for personal injuries suffered by employees in their service.

CHAPTER 157.—An act to provide for the appointment of an assistant district attorney for the middle district.

CHAPTER 158.—An act in relation to the exemption of the property of certain literary and other associations from taxation.

CHAPTER 160.—An act relating to the preservation of the purity of water supplies.

CHAPTER 163.—An act to establish public weighers of salt-water fish landed from vessels.

CHAPTER 165.—An act concerning the investments of mutual life insurance companies.

CHAPTER 173.—An act to establish the salary of the justice of the second district court of Southern Worcester.

CHAPTER 176.—An act to prohibit railroad corporations from requiring women and children to ride in smoking cars.

CHAPTER 177.—An act relative to the stock of associations formed for charitable, educational and other purposes.

CHAPTER 180.—An act relative to the payment of witnesses in inquests and in criminal proceedings before trial justices and the police, district and municipal courts.

CHAPTER 181.—An act relative to women detained or received at police stations, except so far as it applies to the city of Boston.

CHAPTER 184.—An act to provide extra clerical assistance for the clerk of the central district court of Worcester.

CHAPTER 188.—An act in relation to voting by proxy at meetings of corporations.

- CHAPTER 189.—An act to amend section twenty-seven of chapter two hundred and twenty-one of the Public Statutes, relating to the employment of convicts.
- CHAPTER 191.—An act relating to the publication of the annual report of the board of commissioners of savings banks.
- CHAPTER 192.—An act to provide for the release from and the return to county prisons of prisoners transferred thereto from the reformatory prison for women.
- SECTION 4 of CHAPTER 193.—An act to establish the second district court of Essex.
- CHAPTER 195.—An act to establish the salaries of the constables in attendance at the sessions of the municipal court for criminal business in the city of Boston.
- CHAPTER 211.—An act to provide for the preservation of the dockets, records and other official papers of trial justices.
- CHAPTER 214.—An act to establish the salary of the clerk of the first district court of Northern Middlesex.
- CHAPTER 219.—An act to define what shall be deemed to be intoxicating liquor within the meaning of chapter one hundred of the Public Statutes.
- CHAPTER 220.—An act to provide a penalty for the violation of the rules or regulations established by boards of fire engineers.
- CHAPTER 228.—An act to establish the salary of the sheriff of Suffolk county.
- CHAPTER 233.—An act to establish the salary of the clerk of the second district court of Eastern Middlesex.
- CHAPTER 234.—An act to establish the salary of the justice of the police court of Gloucester.
- CHAPTER 235.—An act to establish the salary of the clerk of the police court of Gloucester.
- CHAPTER 239.—An act to provide for the free instruction of deaf mutes or deaf children.
- CHAPTER 240.—An act to amend an act to promote safety at railroad grade crossings.
- CHAPTER 243.—An act to authorize the district police to enter and examine pawn shops.
- CHAPTER 244.—An act to establish the salary of the sheriff of the county of Worcester.
- CHAPTER 246.—An act to provide for extra clerical assistance for the police court of Lowell.
- CHAPTER 248.—An act concerning neglected children and juvenile offenders.
- CHAPTER 253.—An act to amend an act to improve the civil service of the commonwealth and the cities thereof.
- CHAPTER 254.—An act to prohibit the sale of intoxicating liquor on Fast day, Memorial day, Thanksgiving day and Christmas day.
- CHAPTER 257.—An act relating to the salaries of the clerks of courts and the payment of fees in the superior court and the supreme judicial court.
- CHAPTER 261.—An act to amend section one of chapter two hundred and sixty-nine of the acts of the year eighteen hundred and eighty-seven relating to the state board of arbitration and conciliation.
- CHAPTER 262.—An act relative to the conditions upon which licenses to sell intoxicating liquors may be granted.
- CHAPTER 264.—An act in relation to the officers of the state prison at Boston.
- CHAPTER 267.—An act to establish the salary of the district attorney for the southeastern district and to provide for the appointment of a temporary assistant to the district attorney.
- CHAPTER 273.—An act relating to estates tail.
- CHAPTER 275.—An act relating to the report of the controller of the accounts of county officers, officers of inferior courts and trial justices.
- CHAPTER 277.—An act relating to costs on search warrants issued under the liquor laws.
- SECTION 1 of CHAPTER 278.—An act to regulate the running of the cars of one street railway company over the tracks of another.
- CHAPTER 280.—An act relating to clerical assistance in the office of the register of probate and insolvency for the county of Suffolk.
- CHAPTER 282.—An act fixing the time when final reports by auditors, masters in chancery and special masters shall be filed.
- CHAPTER 283.—An act relating to liquor license bonds.
- CHAPTER 285.—An act prescribing uniform dockets and blanks in police and district courts and for trial justices.
- CHAPTER 287.—An act to provide a bounty for the destruction of seals.
- CHAPTER 289.—An act to establish the salary of the assistant district attorney for the eastern district.
- CHAPTER 290.—An act relating to appeals from probate courts.
- CHAPTER 291.—An act to punish interferences with police signal systems.
- CHAPTER 292.—An act to amend chapter two hundred and seventy-six of the acts of the year eighteen hundred and eighty-six, being an act for the better preservation of birds and game.
- CHAPTER 297.—An act relating to the seizure and disposition of implements and furniture used in the illegal keeping or selling of intoxicating liquors.
- CHAPTER 304.—An act concerning the election and the powers and duties of trustees of free public libraries, or of free public libraries and reading-rooms, in towns.
- SECTION 1 of CHAPTER 308.—An act to provide for the disposal of fees received by city officials.
- CHAPTER 310.—An act to require the equipment of fire departments with apparatus for the saving of life at fires.
- CHAPTER 311.—An act to punish the sending of women and girls to houses of ill-fame and their detention therein.
- CHAPTER 313.—An act to amend an act to authorize county commissioners to control travel over bridges constructed or maintained in whole or in part by a county.
- CHAPTER 314.—An act to establish additional terms of the superior court for the county of Bristol.
- CHAPTER 315.—An act to enable tenants under obligation to pay taxes assessed on real estate to apply for an abatement thereof.
- CHAPTER 316.—An act to regulate the erection and construction of certain buildings.
- CHAPTER 317.—An act in relation to the release of prisoners from the Massachusetts reformatory.
- CHAPTER 318.—An act for the protection of great ponds.
- CHAPTER 320.—An act in relation to bonds of city and town clerks.
- CHAPTER 321.—An act authorizing foreign manufacturing corporations to hold real estate in this commonwealth.

- CHAPTER 322.—An act to provide for increasing the amount which may be advanced from the treasury for aiding prisoners discharged from the Massachusetts reformatory, and to provide for aiding prisoners removed therefrom.
- CHAPTER 323.—An act to amend chapter two hundred and seventeen of the acts of the year eighteen hundred and eighty-two relating to returns of property held for benevolent, charitable or scientific purposes.
- CHAPTER 325.—An act in relation to bonds on appeal in actions for the summary process for the recovery of land.
- CHAPTER 326.—An act to enable incorporated religious societies to make by-laws.
- CHAPTER 327.—An act to establish the salaries of the matrons, deputy matrons and assistant matrons in the reformatory prison for women.
- CHAPTER 328.—An act in relation to clerical assistance for the commissioners of prisons.
- CHAPTER 329.—An act concerning the negotiability of certain promissory notes and other instruments.
- CHAPTER 330.—An act in relation to the salary of the agent for discharged female prisoners.
- CHAPTER 331.—An act authorizing towns to regulate the catching of pickerel.
- CHAPTER 334.—An act relative to the discharge of persons appointed under the civil service law.
- CHAPTER 335.—An act in relation to the officers of the Massachusetts reformatory.
- CHAPTER 336.—An act to provide for the definition and preservation of town boundary lines.
- CHAPTER 341.—An act prescribing the minimum fees for liquor licenses.
- CHAPTER 344.—An act relative to notice and service of notice of petitions for the enforcement of liens on buildings and lands.
- CHAPTER 345.—An act concerning judgment and execution in favor of adverse claimants in trustee process.
- CHAPTER 346.—An act to amend chapter one hundred and seventy-eight of the Public Statutes relating to partition of lands.
- CHAPTER 350.—An act in addition to an act to establish a board of gas commissioners.
- CHAPTER 352.—An act to establish the compensation of clerks pro tempore of municipal, police and district courts.
- CHAPTER 357.—An act to establish the number of officers in attendance upon the superior court for the county of Suffolk and in relation to their duties.
- CHAPTER 362.—An act concerning the assessment of taxes in certain cases.
- CHAPTER 363.—An act to amend section four of chapter eleven of the Public Statutes relating to the taxation of personal estates.
- CHAPTER 366.—An act to establish a naval battalion to be attached to the volunteer militia.
- CHAPTER 371.—An act relating to certain court officers in the county of Suffolk.
- CHAPTER 372.—An act in relation to agreements to make wills of real and personal estate.
- CHAPTER 375.—An act to protect the purity of inland waters, and to require consultation with the state board of health regarding the establishment of systems of water supply, drainage and sewerage.
- CHAPTER 379.—An act to authorize cities to indemnify police officers for injuries received or expenses incurred while acting as police officers.
- CHAPTER 380.—An act relative to the proof of certain probate notices.
- CHAPTER 384.—An act to provide armories for the Massachusetts volunteer militia.
- CHAPTER 385.—An act to establish the salary of the secretary of the commonwealth.
- CHAPTER 387.—An act in relation to mortgage loan and investment companies.
- CHAPTER 388.—An act relative to the discharge of small loans and the redemption of the security given for such loans.
- CHAPTER 389.—An act to provide for an additional officer on the district police force.
- CHAPTER 390.—An act to amend and codify the statutes relating to the collection of taxes.
- CHAPTER 391.—An act to amend section one of chapter three hundred and five of the acts of the year eighteen hundred and eighty-six concerning the punishment for rape.
- CHAPTER 393.—An act relative to the validity of mortgages of real estate as against assignees in insolvency.
- CHAPTER 395.—An act to prevent desecration of graves by the removal therefrom of flowers, flags or other memorial tokens.
- CHAPTER 396.—An act to expedite the settlement of claims for pensions.
- CHAPTER 397.—An act relating to the laying out, alteration, discontinuance and repairs of highways in the city of Boston.
- CHAPTER 403.—An act in relation to the labor of prisoners.
- CHAPTER 405.—An act providing for special judgments in certain cases where bonds are given to dissolve attachments or to prosecute reviews.
- CHAPTER 413.—An act in relation to safe deposit, loan and trust companies.
- CHAPTER 414.—An act to regulate the sale of elder apples, beans and peas.
- CHAPTER 415.—An act to amend section thirty of chapter one hundred and fifty-four of the Public Statutes relating to processes issuing from police and district courts.
- CHAPTER 417.—An act to provide for aiding discharged female prisoners.
- CHAPTER 419.—An act relating to the procedure in poor debtor matters.
- CHAPTER 420.—An act in relation to the confirmation of defective acts or proceedings of probate courts, or of persons acting under appointment from probate courts.
- CHAPTER 425.—An act to change the title of the law clerk of the attorney-general and to prescribe his duties.
- CHAPTER 429.—An act relating to fraternal beneficiary organizations.
- CHAPTER 431.—An act to aid small towns to provide themselves with school superintendents.
- CHAPTER 432.—An act authorizing the auditor of the commonwealth to employ an additional clerk.
- CHAPTER 433.—An act to amend section twenty-seven of chapter one hundred and eighty-one of the Public Statutes relating to suits for redemption of mortgaged premises.

One Thousand Eight Hundred and Eighty-nine.

- CHAPTER 11. — An act providing for a second assistant clerk of the courts for the county of Middlesex.
- CHAPTER 12. — An act to establish the salary of the justice of the first district court of Southern Middlesex.
- CHAPTER 16. — An act to establish the salary of the treasurer of the county of Bristol.
- CHAPTER 19. — An act to establish the salary of the clerk of the police court of Marlborough.
- CHAPTER 21. — An act to authorize towns to celebrate the two hundred and fiftieth anniversaries of their incorporation.
- CHAPTER 28. — An act to establish the salary of the clerk of the police court of Springfield.
- CHAPTER 30. — An act to establish the salaries of the county commissioners of the county of Hampden.
- CHAPTER 38. — An act to establish the salary of the sheriff of the county of Hampden.
- CHAPTER 39. — An act to establish the salary of the first assistant clerk of the municipal court of the city of Boston for civil business.
- CHAPTER 41. — An act to establish the salary of the clerk of the third district court of Bristol.
- CHAPTER 50. — An act providing for a fourth assistant clerk of the superior court, civil session, for the county of Suffolk.
- CHAPTER 54. — An act to establish the salary of the justice of the third district court of Bristol.
- CHAPTER 58. — An act to establish the salary of the treasurer of the county of Berkshire.
- CHAPTER 62. — An act to provide extra clerical assistance for the clerk of the second district court of Bristol.
- CHAPTER 66. — An act in relation to sales and mortgages of trust estates.
- CHAPTER 70. — An act to establish the salary of the auditor of accounts.
- CHAPTER 83. — An act to establish the salary of the clerk of the central district court of Worcester.
- CHAPTER 84. — An act relating to the ownership of real estate for the purpose of taxation.
- CHAPTER 85. — An act to provide for clerical assistance in the office of the treasurer of the county of Middlesex.
- SECTION 1 of CHAPTER 90. — An act to further provide for the support of the criminal insane by the commonwealth.
- CHAPTER 92. — An act to establish the salary of the clerk of the municipal court of the West Roxbury district of the city of Boston.
- CHAPTER 97. — An act to establish the salary of the justice of the police court of Fitchburg.
- CHAPTER 100. — An act relating to the admission of dying declarations as evidence in certain cases.
- CHAPTER 108. — An act enabling towns to authorize boards of health to enforce regulations concerning house drainage.
- CHAPTER 109. — An act for the further protection, preservation and propagation of lobsters.
- CHAPTER 112. — An act relating to the election, powers and duties of trustees of free public libraries and reading-rooms in towns.
- CHAPTER 113. — An act relative to imposing sentences upon female convicts.
- CHAPTER 114. — An act to fix the penalties for violations of the liquor laws.
- CHAPTER 115. — An act to amend chapter two hundred and eighty-three of the acts of the year eighteen hundred and eighty-six relating to the assessment of taxes.
- CHAPTER 123. — An act relating to the discharge of inmates of the state industrial and reform schools.
- CHAPTER 130. — An act to establish the salary of the justice of the district court of Eastern Hampden.
- CHAPTER 135. — An act to amend an act relating to the employment of minors who cannot read and write in the English language.
- CHAPTER 137. — An act to establish the salary of the clerk of the third district court of Plymouth.
- CHAPTER 143. — An act to establish the salary of the second assistant clerk of the municipal court for civil business of the city of Boston.
- SECTION 2 of CHAPTER 152. — An act to provide for the appointment of an assistant clerk of the police court of Lowell.
- CHAPTER 158. — An act to establish the salary of the justice of the second district court of Eastern Worcester.
- CHAPTER 159. — An act relating to co-operative banks.
- CHAPTER 169. — An act in relation to the inspection of gas and gas meters.
- CHAPTER 170. — An act to provide for the appointment of a third assistant clerk of the municipal court of the city of Boston for civil business.
- CHAPTER 173. — An act in relation to the drawing and summoning of jurors in the supreme judicial court for the county of Barnstable.
- CHAPTER 174. — An act to establish the salary of the constables of the municipal court of the Roxbury district of the city of Boston.
- CHAPTER 177. — An act to establish the salary of the secretary of the civil service commission.
- CHAPTER 182. — An act fixing the times for holding probate courts in the county of Middlesex.
- CHAPTER 183. — An act to amend an act to improve the civil service of the commonwealth and the cities thereof.
- CHAPTER 185. — An act to provide for the disposition of legacies bequeathed to minors who have no legal guardian.
- CHAPTER 186. — An act relative to the sale of intoxicating liquors on days of special elections in cities.
- CHAPTER 192. — An act concerning the administration of estates after the expiration of twenty years from the decease of a testator or intestate.
- CHAPTER 193. — An act relating to appeals from orders passed by boards of health concerning offensive trades.
- CHAPTER 197. — An act enlarging and defining the powers of women appointed special commissioners.
- CHAPTER 198. — An act to establish the salary of the justice of the first district court of Northern Middlesex.
- CHAPTER 204. — An act concerning the property of married women.
- CHAPTER 206. — An act to provide clerical assistance for the clerk of the municipal court of the Charlestown district of the city of Boston.

- CHAPTER 209. — An act providing for additional clerical assistance in the office of the register of probate and insolvency for the county of Worcester.
- CHAPTER 210. — An act relative to voting by proxy at meetings of street railway companies.
- CHAPTER 215. — An act relative to the official signatures of assistant clerks of courts.
- CHAPTER 217. — An act to establish the salary of the justice of the municipal court of the Roxbury district of the city of Boston.
- CHAPTER 218. — An act to establish the salary of the clerk of the second district court of Eastern Worcester.
- SECTION 3 of CHAPTER 222. — An act relative to the voting as proxies and the soliciting of proxy votes by officers of corporations and the filing of lists of stockholders.
- CHAPTER 226. — An act to amend an act to provide for the free instruction of deaf mutes or deaf children.
- CHAPTER 227. — An act to establish the salary of the justice of the municipal court of the Charlestown district of the city of Boston.
- CHAPTER 229. — An act to prohibit sales on street cars by minors under the age of ten years.
- SECTION 2 of CHAPTER 230. — An act in aid of the hospital cottages for children in Baldwinville in the town of Templeton.
- CHAPTER 234. — An act relative to the rights of a husband or wife in the real estate of a deceased wife or husband.
- CHAPTER 237. — An act fixing the times and places for holding probate courts in the county of Plymouth.
- CHAPTER 238. — An act to establish the salary of the clerk of the district attorney for the county of Suffolk.
- CHAPTER 239. — An act to establish the salary of the assistant clerk of the municipal court of the Roxbury district of the city of Boston.
- CHAPTER 242. — An act to increase the salary of the justice of the municipal court of the South Boston district of the city of Boston.
- CHAPTER 250. — An act to establish the salary of the district attorney of the middle district.
- CHAPTER 253. — An act relating to the payment of county taxes.
- CHAPTER 258. — An act to authorize manufacturing corporations to support free beds in hospitals for the use of their employees.
- CHAPTER 260. — An act to establish the salary of the treasurer of the county of Plymouth.
- CHAPTER 261. — An act to establish the salaries of the justice and clerk of the first district court of Bristol.
- CHAPTER 263. — An act to establish the salary of the justice of the district court of East Norfolk.
- CHAPTER 266. — An act to authorize executors and administrators with the will annexed to settle controversies by arbitration or compromise.
- CHAPTER 269. — An act in addition to an act fixing the times and places for holding probate courts in the county of Plymouth.
- CHAPTER 277. — An act to establish the salary of the clerk of the police court of Newburyport.
- CHAPTER 281. — An act to establish the salary of the justice of the fourth district court of Plymouth.
- CHAPTER 284. — An act relative to persuading or aiding seamen not to proceed on the voyage for which they have shipped.
- CHAPTER 286. — An act extending the provisions of the Public Statutes relating to the taxable valuation of vessels engaged in the foreign carrying trade.
- CHAPTER 287. — An act changing the time of the sittings of the superior court for civil business for the county of Norfolk.
- CHAPTER 289. — An act to establish the salary of the clerk of the police court of Fitchburg.
- CHAPTER 294. — An act in relation to the approval of bills for the maintenance of the state prison, the reformatory prison for women and the Massachusetts reformatory.
- CHAPTER 298. — An act to authorize cities and towns to furnish relief to soldiers and sailors and the widows of soldiers and sailors who served in the army or navy of the United States during the war of the rebellion.
- CHAPTER 299. — An act requiring cemetery corporations to keep records of all conveyances of burial lots and contracts in relation thereto.
- CHAPTER 303. — An act to establish the salaries of the county commissioners for the county of Middlesex.
- CHAPTER 308. — An act changing the time of the sitting of the superior court in the county of Dukes County.
- CHAPTER 309. — An act for the better protection of infants.
- CHAPTER 310. — An act to provide clerical assistance for the treasurer of the county of Essex.
- CHAPTER 311. — An act in relation to the appointment of auditors by probate courts.
- CHAPTER 313. — An act to require non-resident assignees in insolvency to appoint an agent resident in the commonwealth.
- CHAPTER 315. — An act in relation to proof of notice of appointment and sales of real estate by executors, guardians and others.
- CHAPTER 316. — An act in relation to the issue of mortgage bonds by street railway companies.
- CHAPTER 326. — An act to prevent the feeding of garbage, refuse or offal to milch cows.
- CHAPTER 327. — An act changing the time of the sittings of the superior court for the county of Franklin.
- CHAPTER 328. — An act relating to the annual returns of railroad corporations.
- CHAPTER 334. — An act to amend chapter three hundred and ninety of the acts of the year eighteen hundred and eighty-eight relating to the collection of taxes.
- CHAPTER 339. — An act to establish the salaries of the county commissioners for the county of Bristol.
- CHAPTER 342. — An act relating to investments of safe deposit, loan and trust companies.
- CHAPTER 344. — An act to provide for the transfer of liquor licenses from one locality to another in a city or town.
- CHAPTER 347. — An act to prohibit the sale of intoxicating liquor on Labor day.
- CHAPTER 348. — An act in addition to an act to authorize the New York and New England Railroad Company to mortgage certain of its terminal lands in the city of Boston, and in relation to the purchase of such lands from the commonwealth.
- CHAPTER 349. — An act to establish the salary of the paying teller in the office of the treasurer of the commonwealth.

- CHAPTER 351.—An act to establish the salary of the chief examiner of the civil service commission.
- CHAPTER 352.—An act placing engineers and others having charge of steam boilers in school buildings in the city of Boston under civil service rules.
- CHAPTER 356.—An act permitting accident insurance companies to insure, under certain conditions, the liability of employers for injuries received by persons in their employ.
- CHAPTER 360.—An act to amend chapter four hundred and eleven of the acts of the year eighteen hundred and eighty-seven, entitled an act concerning the militia of the commonwealth of Massachusetts.
- CHAPTER 361.—An act to prohibit the sales of intoxicating liquor by holders of fourth and fifth class licenses on election days.
- CHAPTER 370.—An act to establish the salary of the secretary of the state board of health.
- CHAPTER 371.—An act to promote the safety of the public at grade crossings.
- CHAPTER 372.—An act relative to temporary loans by cities and towns.
- CHAPTER 373.—An act to change the name of the board of gas commissioners.
- CHAPTER 377.—An act authorizing cities and towns to contract for the disposition of garbage, refuse and offal.
- CHAPTER 378.—An act authorizing title insurance companies to examine and guarantee titles to personal property as well as real estate.
- CHAPTER 380.—An act to authorize towns to employ counsel at hearings before committees of the legislature.
- CHAPTER 384.—An act in relation to returning the names of constables to clerks of courts.
- CHAPTER 387.—An act to amend chapter one hundred and sixty-nine of the Public Statutes relating to proof of statutes.
- CHAPTER 390.—An act relating to the recovery of damages for sales of intoxicating liquors to minors.
- CHAPTER 391.—An act authorizing cities and towns to prohibit the taking of eels and shell-fish.
- CHAPTER 393.—An act to provide for filing copies of registers of foreign vessels and for service of process on certain persons and foreign corporations.
- CHAPTER 398.—An act providing for the regulation and removal of posts, wires and other structures in or under public ways and places.
- CHAPTER 399.—An act to protect the property of the Humane society of the commonwealth of Massachusetts.
- CHAPTER 401.—An act relative to recording of attachments of real estate in registries of deeds.
- CHAPTER 402.—An act to establish the salaries of the attorney-general and of the first and second assistant attorneys-general.
- CHAPTER 406.—An act relating to composition with creditors in insolvency.
- CHAPTER 408.—An act in relation to the officers of the Massachusetts reformatory.
- CHAPTER 412.—An act in relation to the officers of the state prison at Boston.
- CHAPTER 414.—An act to establish the Massachusetts hospital for dipsomaniacs and inebriates.
- CHAPTER 415.—An act relating to the procedure in poor debtor matters.
- CHAPTER 420.—An act for the relief of insolvent debtors.
- CHAPTER 432.—An act concerning the order of trials in criminal cases.
- CHAPTER 434.—An act relating to the transmission of intelligence by telephone.
- CHAPTER 435.—An act to provide for making the probate of a will or a determination of intestacy conclusive in certain cases.
- CHAPTER 442.—An act to provide for determining the validity, nature or extent of certain incumbrances upon titles to real estate.
- CHAPTER 444.—An act providing for a second assistant clerk of courts for the county of Essex.
- CHAPTER 446.—An act providing for the taxation of leased properties in use in this commonwealth.
- CHAPTER 447.—An act to permit the granting of divorces in cases of the excessive use of opium or other drugs.
- CHAPTER 448.—An act relating to the recording of office copies of instruments affecting the title to lands lying in more than one county or registry district.
- CHAPTER 449.—An act providing for the final distribution of sums of money deposited in the name of a judge of probate court, as trustee, or by order of any court.
- CHAPTER 452.—An act relative to the carrying on of the business of savings and co-operative banks, and of banking, mortgage loan and investment and trust business.
- CHAPTER 454.—An act relative to damages done by dogs to sheep, lambs, fowls or other domestic animals.
- CHAPTER 457.—An act relating to licenses for hawkers and peddlers.
- CHAPTER 458.—An act to increase the penalty for larceny in certain cases.
- CHAPTER 461.—An act to provide for an adjournment of the September sitting of the superior court for the county of Essex to Lawrence and Haverhill.
- CHAPTER 462.—An act requiring guardians and trustees residing or removing out of the commonwealth to appoint an agent resident in the commonwealth.
- CHAPTER 465.—An act in relation to the exemption of the property of certain associations from taxation.
- CHAPTER 466.—An act relating to the accounts and settlements of executors, administrators, guardians and trustees.
- CHAPTER 467.—An act in relation to the division of poll tax bills.
- CHAPTER 468.—An act in relation to petitions for partition.
- CHAPTER 469.—An act relating to costs in cases of juvenile offenders.
- CHAPTER 470.—An act for the relief of sureties on bonds given to dissolve attachments in certain cases.
- RES. CHAPTER 103.—Resolve providing for the further collection and preservation of the public records of the parishes, towns and counties of the commonwealth.

One Thousand Eight Hundred and Ninety.

- CHAPTER 26.—An act relating to the permanent fund and dividends of mutual fire insurance companies.
- CHAPTER 30.—An act to amend an act to protect the fisheries in the tributaries of Plum Island bay.
- CHAPTER 58.—An act to amend an act authorizing advances to officers entrusted with the disbursement of public moneys.

- CHAPTER 63.—An act relating to the taxation of co-operative banks.
- CHAPTER 71.—An act relating to the funeral expenses of paupers.
- CHAPTER 72.—An act to determine the license fee for spayed dogs.
- CHAPTER 73.—An act relating to the expiration of the licenses of innholders and common victuallers.
- CHAPTER 74.—An act in relation to the preservation of public health in cities.
- CHAPTER 78.—An act relating to loans of the balances of co-operative banks.
- CHAPTER 93.—An act to establish the salary of the justice of the police court of Newton.
- CHAPTER 97.—An act relating to the reports of the bureau of statistics of labor.
- CHAPTER 102.—An act concerning notice in case of infectious or contagious diseases.
- CHAPTER 104.—An act to amend an act concerning the counterfeiting of private labels, stamps and trade-marks.
- CHAPTER 105.—An act relative to the release of dower by the guardian of an insane wife.
- CHAPTER 111.—An act providing that certain sessions of the public schools shall be devoted to exercises of a patriotic nature.
- CHAPTER 119.—An act to authorize cities and towns to contract with hospitals to receive and temporarily care for the unfortunate or sick.
- CHAPTER 124.—An act providing for the purchase or taking of land by cities and towns for the purification and disposal of sewage.
- CHAPTER 126.—An act relating to the publication of the annual report of the board of commissioners of savings banks.
- CHAPTER 127.—An act to authorize appeals from assessors of taxes to the superior court.
- CHAPTER 128.—An act relating to the procedure in poor debtor matters.
- CHAPTER 129.—An act to prevent injury to fish in brooks and streams by sawdust.
- CHAPTER 131.—An act to establish the salary of the justice of the first district court of Southern Worcester.
- CHAPTER 132.—An act to provide for connecting buildings with public sewers.
- CHAPTER 133.—An act to establish the salaries of the county commissioners of the county of Berkshire.
- CHAPTER 137.—An act providing for clerical service in the office of the chief of the district police.
- CHAPTER 143.—An act to establish the salary of the treasurer of Norfolk County.
- CHAPTER 154.—An act to amend an act relating to practice in the superior court.
- CHAPTER 159.—An act relating to the survey and sale of lumber, ornamental wood and ship timber.
- CHAPTER 160.—An act relative to the offices of tax commissioner and commissioner of corporations and to abolish the office of deputy tax commissioner.
- CHAPTER 166.—An act relating to fees for detention and support of prisoners in lock-ups.
- CHAPTER 173.—An act relative to signals at grade crossings.
- SECTION 3 OF CHAPTER 177.—An act to establish district courts in the county of Barnstable,—so far as it relates to salaries.
- CHAPTER 180.—An act to provide for the removal of prisoners from the state prison in Boston to the state farm in Bridgewater.
- CHAPTER 181.—An act authorizing employees of street railway companies to unite with such companies in establishing relief societies.
- CHAPTER 183.—An act to prohibit the employment of women and minors in manufacturing establishments between the hours of ten o'clock at night and six o'clock in the morning.
- CHAPTER 191.—An act relating to the par value of shares of associations for charitable, educational and other purposes.
- CHAPTER 192.—An act relating to clerical assistance in the office of the register of probate and insolvency for the county of Middlesex.
- CHAPTER 193.—An act to limit the time within which trout, land-locked salmon and lake trout may be taken in Berkshire, Franklin, Hampshire and Hampden counties.
- CHAPTER 196.—An act relative to preserving ornamental and shade trees on the highways.
- CHAPTER 197.—An act to impose an excise tax upon certain accident, fidelity and guaranty insurance companies.
- CHAPTER 198.—An act to authorize county commissioners to appoint clerks pro tempore.
- CHAPTER 199.—An act relating to certificates of condition of corporations.
- CHAPTER 201.—An act to establish the salary of the first assistant clerk of the courts for the county of Middlesex.
- CHAPTER 202.—An act further providing for the completion of unfinished business by trial justices.
- CHAPTER 204.—An act to fix the time of payment of certain fees to cities and towns.
- CHAPTER 206.—An act relating to the record and certification of orders drawn by county commissioners, to the vouchers for the same and to the vouchers for incidental expenses in the higher courts.
- CHAPTER 209.—An act relating to clerks' fees in the supreme judicial and superior courts.
- CHAPTER 213.—An act to establish the salaries of the medical examiners for the county of Suffolk.
- CHAPTER 215.—An act relating to deposits of funds by certain public officers.
- CHAPTER 216.—An act relating to accounts and returns of certain public officers.
- CHAPTER 218.—An act to fix the time of payment of certain fines and forfeitures by sheriffs.
- CHAPTER 224.—An act concerning appeal bonds in actions of replevin.
- CHAPTER 225.—An act to provide further with regard to the issue of a summons in minor criminal prosecutions.
- CHAPTER 229.—An act to prohibit the use of set nets and gill nets within one-half mile of the shores of the town of Mattapoisett.
- CHAPTER 230.—An act to provide for licensing persons to keep more than four horses in certain buildings or places.
- CHAPTER 231.—An act relative to fishing in unnavigable tidal streams.
- CHAPTER 237.—An act relative to the destruction of foxes and raccoons in the county of Dukes County.
- CHAPTER 238.—An act to establish the salary of the justice of the district court of Central Middlesex.
- CHAPTER 239.—An act concerning the employment of clerks and other assistance in the department of the secretary of the commonwealth.
- CHAPTER 240.—An act to amend an act authorizing towns and cities to lay out public parks within their limits.

- CHAPTER 242.—An act in relation to the tables of aggregates required to be made by assessors of taxes.
- CHAPTER 243.—An act to amend the Public Statutes relating to co-operative banks.
- CHAPTER 247.—An act to establish the salary of the insurance commissioner.
- CHAPTER 249.—An act to amend an act for the better preservation of birds and game.
- CHAPTER 251.—An act to amend an act to establish the Massachusetts hospital for dipsomaniacs and inebriates.
- CHAPTER 252.—An act removing restrictions from the manufacture and sale of water gas for illuminating purposes.
- CHAPTER 255.—An act to change the title of the instructor of the Massachusetts reformatory.
- CHAPTER 256.—An act relating to fees and expenses in criminal cases.
- CHAPTER 259.—An act providing for the appointment of guardians of married women incompetent by reason of infancy to release right of dower or of homestead.
- CHAPTER 261.—An act relating to certain appeals from probate courts to the superior court.
- CHAPTER 264.—An act relating to public cemeteries.
- CHAPTER 265.—An act concerning the appointment of administrators.
- CHAPTER 266.—An act relating to the sale and distribution of real estate by administrators.
- CHAPTER 267.—An act relating to the removal of subordinate officers of the Massachusetts reformatory.
- CHAPTER 274.—An act concerning real estate owned by certain agricultural societies.
- CHAPTER 276.—An act to require dealers in ice to carry scales in delivery wagons.
- CHAPTER 277.—An act providing fees for witnesses in courts of probate and insolvency in certain cases.
- CHAPTER 278.—An act to authorize the removal of prisoners from the state farm to houses of correction.
- CHAPTER 284.—An act relative to the issuing of search warrants in certain cases.
- CHAPTER 289.—An act making the wages and lay of fishermen subject to attachment by the trustee process.
- CHAPTER 293.—An act for the better protection of lobsters.
- CHAPTER 294.—An act increasing the number of officers who may be appointed for attendance upon the supreme judicial court in the county of Suffolk.
- CHAPTER 296.—An act relating to invoice books in county institutions.
- CHAPTER 297.—An act authorizing the payment of a bounty to certain agricultural societies.
- CHAPTER 300.—An act amending an act relating to the appointment of port wardens and pilots for Buzzard's Bay and Martha's Vineyard.
- CHAPTER 302.—An act to amend an act relative to the publication and presentation to the general court of certain petitions.
- CHAPTER 304.—An act to provide a remedy in cases of alleged violation of law by insurance companies.
- CHAPTER 306.—An act relating to the controller of county accounts and defining the powers of his deputies.
- CHAPTER 308.—An act relating to the oaths of county treasurers and registers of deeds.
- CHAPTER 310.—An act in relation to the business of co-operative banking.
- CHAPTER 315.—An act to amend an act in relation to safe deposit, loan and trust companies.
- CHAPTER 316.—An act to provide for the registration and identification of criminals.
- CHAPTER 319.—An act to fix the tenure of office of the police force in certain cities of the commonwealth.
- CHAPTER 321.—An act concerning the insolvency of foreign corporations.
- CHAPTER 326.—An act relating to the reduction of capital stock by street railway corporations.
- CHAPTER 328.—An act relating to the expenses attending the commitment of prisoners.
- CHAPTER 329.—An act concerning the use of names by certain corporations organized under the laws of other states or countries and doing business in this commonwealth.
- CHAPTER 330.—An act relating to unclaimed funds in the hands of clerks of courts.
- CHAPTER 331.—An act in relation to the collection of taxes and the fee for preparing a tax deed.
- CHAPTER 332.—An act to amend the Public Statutes relative to placing obstructions upon railroad tracks.
- CHAPTER 334.—An act to provide for the registration of the pedigrees of horses used for breeding purposes.
- CHAPTER 335.—An act relating to the Massachusetts school fund.
- CHAPTER 341.—An act concerning fraternal beneficiary corporations.
- CHAPTER 347.—An act to promote the establishment and efficiency of free public libraries.
- CHAPTER 353.—An act relating to fees of trial justices.
- CHAPTER 359.—An act authorizing the police and district courts in the county of Middlesex to establish uniform return days and rules for civil business in said courts.
- CHAPTER 360.—An act to amend an act relating to the salaries of the clerks of courts and the payment of fees in the superior court and the supreme judicial court.
- CHAPTER 368.—An act to permit railroad or street railway companies to use the Meigs system of elevated railways.
- CHAPTER 370.—An act to amend the Public Statutes relating to divorce.
- CHAPTER 371.—An act in relation to bonds issued by electric light companies.
- CHAPTER 373.—An act authorizing the treasurer to receive from the United States any sum of money for the benefit of the Massachusetts Soldiers' Home.
- CHAPTER 374.—An act to require clerks of courts to forward certain papers to the attorney-general.
- CHAPTER 375.—An act constituting nine hours a day's work for all laborers, workmen and mechanics employed by or on behalf of the commonwealth or any city or town therein.
- CHAPTER 377.—An act in relation to the attachment of the property of newspaper offices.
- CHAPTER 378.—An act for the prevention of fire and the preservation of life at the state hospitals and asylums for the insane.
- CHAPTER 379.—An act in addition to an act to aid small towns to provide themselves with school superintendents.
- SECTION 3 of CHAPTER 380.—An act relating to the examination and certification of the accounts of county treasurers.
- CHAPTER 382.—An act relating to crossings at grade by railroads for private use.
- CHAPTER 383.—An act to enable persons to whom a debt is payable if it were not for a lien on buildings and land to dissolve such lien by bond.

- CHAPTER 385. — An act to amend an act to provide for a state board of arbitration for the settlement of differences between employers and their employees.
- CHAPTER 387. — An act relating to composition with creditors in insolvency.
- CHAPTER 388. — An act concerning the contingent expenses of civil actions in commonwealth cases.
- SECTION 3 of CHAPTER 390. — An act providing for the better maintenance and enforcement of the fish and game laws and the distribution of fish.
- CHAPTER 391. — An act concerning the larceny or destruction of wills or other testamentary instruments.
- CHAPTER 395. — An act to amend an act to provide for licensing persons to keep more than four horses in certain buildings or places.
- CHAPTER 398. — An act relative to the recovery of interest.
- CHAPTER 400. — An act relating to assessments for disability and death funds by fraternal beneficiary organizations.
- CHAPTER 403. — An act for the better protection of land owners.
- CHAPTER 404. — An act relating to the regulation and supervision of wires over streets or buildings in cities.
- CHAPTER 408. — An act providing for the final distribution of sums of money deposited or invested by order of probate courts.
- CHAPTER 410. — An act relating to trespass upon real estate.
- CHAPTER 414. — An act to insure hospital care and treatment for certain insane persons.
- CHAPTER 415. — An act authorizing an appropriation for the payment of extraordinary expenses.
- CHAPTER 416. — An act relating to loans or pledges with household goods, wearing apparel or articles of personal use or ornament as collateral.
- CHAPTER 420. — An act regulating the practice in probate courts and courts of insolvency.
- CHAPTER 421. — An act relating to assessment insurance.
- CHAPTER 425. — An act to amend an act concerning the militia.
- CHAPTER 426, except SECTIONS 3, 4 and 5. — An act relative to standard weights, measures and balances.
- CHAPTER 427. — An act relating to the settlement of titles to real estate.
- CHAPTER 428. — An act to promote the abolition of grade crossings.
- CHAPTER 437. — An act relative to wagering contracts in securities and commodities.
- CHAPTER 439. — An act to regulate the incorporation of clubs.
- CHAPTER 440. — An act relating to fees of salaried officers, to expenses of criminal cases, of inquests and of commitment of the insane.
- CHAPTER 443. — An act providing for the extermination of the English sparrow in the commonwealth.
- CHAPTER 446. — An act in relation to the employment of persons in places licensed for the sale of intoxicating liquors.
- CHAPTER 447. — An act to authorize cities and towns to furnish relief to soldiers and sailors and to the widows and minor children of soldiers and sailors who served in the army or navy of the United States during the war of the rebellion.
- CHAPTER 448. — An act to prevent and punish fraud in sales of goods, wares and merchandise at public or private sale by itinerant vendors, and to regulate such sales.
- CHAPTER 449. — An act to regulate sales of goods, wares and merchandise taken into a city or town to be sold by auction.
- CHAPTER 451. — An act relating to engagements of attorneys in the supreme judicial court and the superior court.
- CHAPTER 452. — An act providing for the disposal of property seized under the provisions of chapter two hundred and eighty-four of the acts of the year eighteen hundred and ninety.
- CHAPTER 456. — An act to regulate the employment of legislative counsel and agents and to provide for returns of legislative expenses.
- RES. CHAPTER 67. — Resolve authorizing the color guards of the sons of veterans to parade with fire-arms.

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- CHAPTER 15. — An act to prevent persons from unlawfully using or wearing the badges of the sons of veterans and the woman's relief corps.
- CHAPTER 24. — An act to provide clerical assistance for the state library.
- CHAPTER 33. — An act to amend an act to promote the abolition of grade crossings.
- CHAPTER 38. — An act to enlarge the jurisdiction of notaries public.
- CHAPTER 49. — An act relative to preserving ornamental and shade trees on the highways.
- CHAPTER 58. — An act to prevent deception in the manufacture and sale of imitation butter.
- CHAPTER 59. — An act relating to the unlawful issuing of certificates of divorce.
- CHAPTER 65. — An act requiring assessors of cities and towns to make returns to the secretary of the commonwealth of the number and value of fowl assessed.
- CHAPTER 70. — An act to amend section eleven of chapter four hundred and forty of the acts of the year eighteen hundred and ninety, relating to expenses of courts to be paid by counties.
- CHAPTER 71. — An act to establish the salary of the clerk of the police court of Fitchburg.
- CHAPTER 78. — An act providing for a clerk for the police court of Chicopee, — so far as relates to salary.
- CHAPTER 79. — An act to establish the salaries of the county commissioners for the county of Worcester.
- CHAPTER 80. — An act to establish the salaries of the county commissioners for the county of Norfolk.
- CHAPTER 84. — An act to amend section twenty-one of chapter eighty-six of the Public Statutes, relating to the state almshouse and state paupers.
- CHAPTER 87. — An act relating to the fees of clerks of the supreme judicial and superior courts.
- CHAPTER 89. — An act to provide clerical assistance for the justices of the supreme judicial court.
- CHAPTER 90. — An act to amend chapter eighty-four of the Public Statutes relating to the support of paupers by cities and towns.
- CHAPTER 92. — An act to establish the salary of the assistant clerk of courts for the county of Worcester.

- CHAPTER 97. — An act relating to the apportionment of sewer assessments in cities.
- CHAPTER 107. — An act to establish the salary of the clerk of the second district court of Eastern Middlesex.
- CHAPTER 108. — An act to establish the salary of the justice of the second district court of Bristol.
- CHAPTER 113. — An act to provide for the appointment of an assistant district attorney for the south-eastern district.
- CHAPTER 116. — An act extending the provisions of the Public Statutes relating to the taxable valuation of vessels engaged in the foreign carrying trade.
- CHAPTER 122. — An act to amend an act for the better protection of lobsters.
- CHAPTER 123. — An act to further amend an act to promote the abolition of grade crossings, so as to provide for the assessment of damages in case of the discontinuance of a public way.
- CHAPTER 124. — An act relative to the filing of certificates by agricultural societies claiming bounties.
- CHAPTER 128. — An act relative to the taking of smelts in the county of Nantucket.
- CHAPTER 129. — An act relative to signals of the approach of trains to crossings above the level of a highway.
- CHAPTER 131. — An act concerning lists of jurors in the counties of Nantucket and Dukes County.
- CHAPTER 135. — An act to prevent the taking of bluefish with nets or seines in a portion of the waters of Wellfleet bay in the town of Wellfleet.
- CHAPTER 136. — An act to authorize cities to make ordinances to govern the sale of prepared wood, slabs and edgings when sold by the load.
- CHAPTER 137. — An act relative to the fisheries in the town of Westport.
- CHAPTER 139. — An act relating to pleadings and practice in the district court of Hampshire.
- CHAPTER 140. — An act to authorize the civil service commissioners to summon witnesses and take testimony.
- CHAPTER 144. — An act to amend an act relating to sales of goods, wares and merchandise taken into a city or town to be sold by auction.
- CHAPTER 153. — An act concerning the support of state poor by cities and towns.
- CHAPTER 154. — An act to establish the salary of the sheriff of the county of Hampshire.
- CHAPTER 158. — An act to amend an act to establish the Massachusetts hospital for dipsomaniacs and inebriates.
- CHAPTER 159. — An act in relation to diplomas granted to graduates of the state normal schools in this commonwealth.
- CHAPTER 160. — An act to establish the salary of the justice of the municipal court of the Charlestown district of the city of Boston.
- CHAPTER 161. — An act to establish the salary of the justice of the police court of Somerville.
- CHAPTER 162. — An act to establish the salary of the justice of the police court of Lynn.
- CHAPTER 163. — An act to authorize beneficiary associations to return to members certain additions to death funds.
- CHAPTER 170. — An act to give towns jurisdiction over highways and county bridges.
- CHAPTER 175. — An act relating to sittings of the superior court for the county of Barnstable.
- CHAPTER 177. — An act relating to the distribution of the school fund.
- CHAPTER 180. — An act relating to primary declarations in naturalization cases.
- CHAPTER 181. — An act relating to certain officers in attendance upon the supreme judicial court for the county of Suffolk.
- CHAPTER 187. — An act to provide for the returns of prison expenses.
- CHAPTER 188. — An act relating to notice of diseases dangerous to public health.
- CHAPTER 189. — An act to authorize the formation of corporations for the purpose of generating and furnishing hydrostatic pressure for mechanical power.
- CHAPTER 190. — An act to establish the salary of the clerk of the fourth district court of Plymouth.
- CHAPTER 194. — An act concerning the better protection of infants.
- CHAPTER 195. — An act to authorize foreign life insurance companies to transact the business of accident insurance.
- SECTION 1 of CHAPTER 196. — An act amending an act to expedite the settlement of claims for pensions.
- CHAPTER 200. — An act relating to sentences of prisoners in the Massachusetts reformatory.
- CHAPTER 204. — An act relating to the making up and shifting of freight trains and the sounding of locomotive whistles.
- CHAPTER 209. — An act to prohibit the employment of prisoners outside their places of confinement.
- SECTION 7 of CHAPTER 210. — An act to provide against depredations by the insect known as the ocneria dispar or gypsy moth.
- CHAPTER 216. — An act to provide additional accommodations for passengers on street railways.
- CHAPTER 218. — An act to authorize any city or town to lease its public buildings or a part thereof to veteran firemen's associations.
- CHAPTER 220. — An act relating to stables in cities.
- CHAPTER 221. — An act relating to temporary loans by cities and towns.
- CHAPTER 223. — An act relating to the employment of legislative counsel and agents and to provide for returns of legislative expenses.
- CHAPTER 225. — An act to authorize the county commissioners of the several counties, except Suffolk, to provide for the arranging and indexing of the probate records in their respective counties.
- CHAPTER 227. — An act relating to trials in the superior court without a jury.
- SECTIONS 1 and 3 of CHAPTER 228. — An act to provide for the use of machinery in the state prison, reformatories and houses of correction.
- CHAPTER 229. — An act conferring certain powers upon the chiefs of fire departments in cities.
- CHAPTER 232. — An act concerning the volunteer militia.
- CHAPTER 236. — An act relating to fines, fees and other moneys received by the clerks of the courts and other officers in the county of Suffolk.
- CHAPTER 244. — An act relating to the discharge of mechanics' liens.
- CHAPTER 249. — An act to regulate the heating of passenger cars on railroads.
- CHAPTER 254. — An act relating to evidence in cases of violation of certain game laws.
- CHAPTER 257. — An act relating to corporate names.

- CHAPTER 259. — An act relating to the sinking funds of the commonwealth.
- CHAPTER 261. — An act authorizing appeals in certain cases from order of inspectors of public buildings.
- CHAPTER 262. — An act to authorize the governor and council to take action in cases relating to grade crossings.
- CHAPTER 265. — An act relating to officers of incorporated churches.
- CHAPTER 266. — An act in relation to the conservation of the Connecticut River.
- CHAPTER 271. — An act relating to recognizances in poor debtor proceedings.
- CHAPTER 272. — An act to aid small towns to provide themselves with school superintendents.
- SECTION 2 of CHAPTER 273. — An act to establish the district court of Southern Norfolk, — so far as it relates to salaries.
- CHAPTER 287. — An act changing the time of the sittings of the supreme judicial court and the superior court for civil business for the county of Bristol.
- CHAPTER 288. — An act to prevent excessive charges in the redemption of tax titles.
- CHAPTER 289. — An act relating to declaration of dividends by certain insurance companies.
- CHAPTER 291. — An act relating to the appointment of referees to settle matters of difference between insurers and insured in case of loss by fire.
- CHAPTER 293. — An act conferring additional jurisdiction upon the superior court.
- CHAPTER 295. — An act to punish prisoners who wilfully destroy the property of the commonwealth at the state prison at Boston.
- CHAPTER 299. — An act changing the time within which the trustees of the state farm at Bridgewater and the state almshouse at Tewksbury are required to make their annual report.
- CHAPTER 300. — An act to authorize the secretary of the state board of agriculture to employ an assistant clerk.
- CHAPTER 304. — An act providing for the payment of fines collected in prosecutions for cruelty to animals.
- CHAPTER 310. — An act in relation to the deposit of public moneys with certain trust companies.
- CHAPTER 313. — An act providing for the payment of fees in proceedings in poor debtor cases.
- CHAPTER 315. — An act requiring the examination of reservoirs, reservoir-dams and mill-dams by county commissioners.
- CHAPTER 319. — An act in addition to an act relating to the adulteration of food and drugs.
- CHAPTER 321. — An act to extend the time within which the city of Boston may pay certain debts.
- CHAPTER 325. — An act relating to fees and expenses in proceedings before trial justices.
- CHAPTER 327. — An act relating to the fisheries in Buzzard's bay.
- CHAPTER 333. — An act to regulate the sale of candy shells inclosing liquid containing alcohol.
- CHAPTER 339. — An act relating to the giving of bonds without sureties by trustees.
- CHAPTER 341. — An act concerning foreign corporations having a usual place of business in this commonwealth.
- CHAPTER 342. — An act relating to clerical assistance in the office of the tax commissioner and commissioner of corporations.
- CHAPTER 343. — An act to prevent false representations to overseers of the poor and the state board of lunacy and charity.
- CHAPTER 349. — An act relative to the bribery of certain public officers.
- CHAPTER 354. — An act relating to the conveyance of real estate in cases of disseizin.
- CHAPTER 355. — An act to restrict the height of buildings in cities.
- CHAPTER 356. — An act to provide for the appointment of probation officers.
- CHAPTER 358. — An act authorizing the probate court to compel parents to contribute to the support of minor children under guardianship.
- CHAPTER 360. — An act authorizing the commissioner of corporations to change the names of corporations.
- CHAPTER 362. — An act to authorize sentence in criminal cases in the superior court where an appeal appears frivolous.
- CHAPTER 367. — An act relating to bonds in bastardy cases.
- CHAPTER 369. — An act in relation to the sale of intoxicating liquors.
- CHAPTER 370. — An act to enable cities and towns to manufacture and distribute gas and electricity.
- CHAPTER 371. — An act relating to the employment of prisoners.
- CHAPTER 374. — An act relative to the sale of articles containing arsenic.
- CHAPTER 375. — An act to establish the salaries of the clerks in the auditor's department.
- CHAPTER 379. — An act relating to prosecutions for capital crimes.
- CHAPTER 381. — An act relating to the administering of oaths to persons bringing in lists of property for assessment.
- CHAPTER 382. — An act to prohibit the issuing of certain obligations to be redeemed in numerical order or in any arbitrary order of precedence.
- CHAPTER 383. — An act to define the rights of joint owners in personal property.
- CHAPTER 384. — An act relating to the management of the boarding houses at the state normal schools.
- CHAPTER 392. — An act relating to the fees to be paid in the district and municipal courts in the city of Boston.
- CHAPTER 396. — An act to divide the commonwealth into districts for the choice of representatives in the congress of the United States.
- CHAPTER 400. — An act relative to the settlement of insolvent estates in certain cases after the decease of the original assignee.
- CHAPTER 402. — An act to establish a nautical training school.
- CHAPTER 403. — An act to authorize the commissioners of savings banks to prevent foreign co-operative banking corporations from transacting business in this commonwealth.
- CHAPTER 406. — An act to amend chapter one hundred and eighty-five of the acts of the year eighteen hundred and ninety-one entitled "An act relating to the promotion of anatomical science."
- CHAPTER 407. — An act relative to affidavits in poor debtor cases.
- CHAPTER 410. — An act to establish the salaries of the first and second clerks in the office of the secretary of the commonwealth.
- CHAPTER 411. — An act to establish the salary of the private secretary of the governor and the executive clerk of the governor and council.

- CHAPTER 412. — An act to provide for the protection of dairy products and to establish a state dairy bureau.
 CHAPTER 414. — An act to require an affidavit in petitions for administration of estates of deceased persons.
 CHAPTER 415. — An act to give to the probate courts jurisdiction in equity in the administration of the estates of deceased persons.
 CHAPTER 416. — An act relating to fines in criminal cases.
 CHAPTER 418. — An act relating to disbarred attorneys and persons falsely representing themselves to be attorneys at law.
 CHAPTER 419. — An act in relation to naturalization.
 CHAPTER 420. — An act to provide for the detention and treatment of inmates of penal and charitable institutions who are afflicted with certain malignant diseases.
 CHAPTER 425. — An act imposing a tax on collateral legacies and successions.
 CHAPTER 427. — An act relating to the punishment of drunkenness.
 CHAPTER 429. — An act to establish the salary of the executive messenger.

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- CHAPTER 16. — An act to authorize the appointment of an executive stenographer.
 CHAPTER 40. — An act in relation to the admission of fraternal beneficiary organizations of other states.
 CHAPTER 50. — An act to exempt certain English bloodhounds from the provisions of the act prohibiting the keeping of bloodhounds.
 CHAPTER 55. — An act relating to the conditions under which dams may be erected across navigable streams and outlets of great ponds for flowing cranberry lands.
 CHAPTER 58. — An act to establish the salary of the third assistant clerk of the municipal court of the city of Boston for civil business.
 CHAPTER 59. — An act relating to the issuing of railroad passes and the compensation of members of the legislature.
 CHAPTER 63. — An act relative to the packing and branding of nails.
 CHAPTER 67. — An act to raise the standard of the illuminating power of gas.
 CHAPTER 74. — An act relating to the taking of oysters in the town of Yarmouth.
 CHAPTER 87. — An act providing for a fifth assistant clerk of the superior court, civil session, for the county of Suffolk.
 CHAPTER 93. — An act to establish the salaries of the justice and clerk of the police court of Marlborough.
 CHAPTER 95. — An act to establish the salary of the clerk of the courts for the county of Barnstable.
 CHAPTER 100. — An act to establish the salary of the justice of the East Boston district court.
 CHAPTER 101. — An act to establish the salary of the governor of the commonwealth.
 SECTION 2 of CHAPTER 102. — An act relating to the pursuing of wild fowl.
 CHAPTER 107. — An act to establish the number of officers in attendance upon the superior and supreme judicial courts for the county of Middlesex, to define their duties and to establish their salaries.
 CHAPTER 109. — An act relative to the taking land for taxes so as to dispense with the filing of certain papers connected with such taking.
 CHAPTER 110. — An act authorizing steam railroads to use electricity as a motive power.
 CHAPTER 116. — An act giving probate courts concurrent jurisdiction with the supreme judicial court in equity in relation to trusts.
 CHAPTER 118. — An act relative to the revocation of a will on the marriage of the testator.
 CHAPTER 121. — An act relating to the residence of registers of deeds and to the place of keeping books, records, deeds and papers belonging to their offices.
 CHAPTER 123. — An act to provide and define the punishment for perjury.
 CHAPTER 127. — An act authorizing the transfer of cases in the supreme judicial court.
 CHAPTER 128. — An act to establish the salary of the chief of the district police.
 CHAPTER 129. — An act relating to taxes upon certain accident, fidelity and guaranty insurance companies.
 CHAPTER 133. — An act relating to the payment of official stenographers of the superior court.
 CHAPTER 138. — An act relating to the fraudulent conversion of money or securities deposited for a specific purpose.
 CHAPTER 139. — An act providing compensation for the members of the state dairy bureau.
 CHAPTER 140. — An act to authorize the preparation for the state library of an index of current events.
 CHAPTER 143. — An act to establish the salary of the first clerk of the secretary of the state board of agriculture.
 CHAPTER 144. — An act to provide clerical assistance for the treasurer of the county of Bristol.
 CHAPTER 147. — An act relating to the time of marking shade trees for their preservation.
 CHAPTER 148. — An act in reference to the return days of writs issued by trial justices and district, police and municipal courts.
 CHAPTER 152. — An act regulating the use of embalming fluid in cases where persons are supposed to have come to their death by violence.
 CHAPTER 159. — An act authorizing certain boards and commissions to consult and advise with the attorney-general on questions of law relating to their official business.
 CHAPTER 160. — An act giving trial justices jurisdiction of cases of drunkenness.
 CHAPTER 165. — An act relative to the right to the care and control of lots and tombs in public cemeteries in towns.
 CHAPTER 166. — An act authorizing cities and towns to appropriate money for anniversary celebrations.
 CHAPTER 167. — An act relative to the entry and driving of horses at places where purses or premiums are competed for.
 CHAPTER 171. — An act to require railroad companies to maintain crossings to give access to lands cut off by railroads.
 CHAPTER 177. — An act appropriating ten thousand dollars annually for the Massachusetts state firemen's association.

- CHAPTER 178. — An act to authorize cities and towns to incur indebtedness for the purpose of paying damages occasioned by the taking of land for the alteration of grade crossings.
- CHAPTER 180. — An act providing for the assignment of police officers for special service at agricultural and horticultural exhibitions.
- CHAPTER 187. — An act to establish the salaries of the first and second assistant clerks of the courts for the county of Middlesex.
- CHAPTER 191. — An act relative to liens on buildings and land.
- CHAPTER 192. — An act to authorize street railway companies to refund their funded debt in certain cases.
- CHAPTER 198. — An act relative to the change of names of corporations.
- CHAPTER 200. — An act in relation to fees for arrests for drunkenness by officers deriving their sole compensation from taxable fees.
- CHAPTER 201. — An act relating to changes in the name of certain corporations.
- CHAPTER 202. — An act fixing the time and place of holding probate courts in the county of Suffolk.
- CHAPTER 206. — An act to increase the penalty for the unauthorized removal of gravel, sand and other material from the beaches.
- CHAPTER 209. — An act relative to special judgments against bankrupt and insolvent debtors.
- CHAPTER 228. — An act relating to crossings of railroads, street railways, highways and other ways.
- CHAPTER 230. — An act relating to clerical assistance in the office of the register of probate and insolvency for the county of Suffolk.
- CHAPTER 231. — An act to reduce witness fees and other costs where two or more cases are tried together.
- CHAPTER 233. — An act to establish the salary of the first assistant district-attorney for the Suffolk district.
- CHAPTER 234. — An act to increase the bounty for the destruction of seals.
- CHAPTER 238. — An act relative to appointments on the staff of the commander in chief.
- CHAPTER 242. — An act in relation to assistant probation officers for the municipal court of the city of Boston.
- CHAPTER 243. — An act authorizing the reimbursement of expenses incurred by certain towns in the maintenance of the insane.
- CHAPTER 245. — An act to give greater powers to cities and towns in relation to the construction of sewers.
- CHAPTER 249. — An act to establish the salary of the second clerk in the office of the chief of the district police.
- CHAPTER 252. — An act to prohibit the sale of trout less than six inches in length.
- CHAPTER 253. — An act to provide for re-recording certain records.
- CHAPTER 254. — An act requiring street railway companies to contribute to the expense of printing their reports.
- CHAPTER 255. — An act authorizing the furnishing of one hundred dollars' worth of books to the free libraries of certain towns whose valuation does not exceed six hundred thousand dollars.
- CHAPTER 256. — An act making the record of instruments affecting the title to land conclusive evidence of delivery.
- CHAPTER 259. — An act requiring certain returns to be made to the board of gas and electric light commissioners.
- CHAPTER 260. — An act relating to the liability of employers to make compensation for personal injuries suffered by employees in their service.
- CHAPTER 262. — An act requiring the secretary of the commonwealth to give a bond and report annually the transactions of his office.
- CHAPTER 263. — An act relating to the returns to be made to the board of gas and electric light commissioners.
- CHAPTER 266. — An act in relation to procedure upon writ of error or similar proceedings in criminal cases.
- SECTION 1 of CHAPTER 267. — An act to authorize the grading and classifying of prisoners in the state prison.
- CHAPTER 268. — An act relating to special justices of inferior courts.
- CHAPTER 270. — An act relating to the payment for labor performed on buildings or public works owned by cities or towns.
- CHAPTER 271. — An act to increase the number of associate justices of the superior court.
- CHAPTER 274. — An act placing restrictions upon the erection of electric light wires.
- CHAPTER 275. — An act to prevent the acquisition of rights of way across railroads by prescription.
- CHAPTER 286. — An act to establish the salary of the associate medical examiner for the county of Suffolk.
- CHAPTER 289. — An act in relation to the filing for record of claims against real estate.
- CHAPTER 290. — An act to require city and town clerks to notify the commissioners of prisons of the appointment of certain police officers.
- CHAPTER 291. — An act to establish the salary of the commissioner of state aid appointed by the governor and council.
- CHAPTER 295. — An act to establish the salary of the treasurer of the county of Norfolk.
- CHAPTER 298. — An act to establish the salaries of the county commissioners for the county of Plymouth.
- CHAPTER 300. — An act relating to the record and return of marriages.
- CHAPTER 302. — An act relating to sentences to the Massachusetts reformatory.
- CHAPTER 303. — An act relating to the age of persons sentenced to the Massachusetts reformatory.
- CHAPTER 312. — An act relating to the abolition of grade crossings.
- SECTION 2 of CHAPTER 313. — An act relating to the identification of criminals.
- CHAPTER 318. — An act to provide for the licensing and regulating of boarding houses for infants.
- CHAPTER 319. — An act to establish the salary of the district-attorney for the southern district.
- CHAPTER 327. — An act in relation to enforcing the liability of shareholders in trust companies.
- CHAPTER 331. — An act relating to peddling by minors.
- CHAPTER 333. — An act to provide for the appointment of a commissioner of public records.
- CHAPTER 348. — An act relating to naturalization in the inferior courts.
- CHAPTER 354. — An act to establish the salaries of the county commissioners for the county of Essex.
- CHAPTER 359. — An act in relation to the recovery of costs from insolvent estates.
- CHAPTER 361. — An act in relation to the detention of material witnesses in cases of felony.
- CHAPTER 366. — An act to establish a naval brigade, to be attached to the volunteer militia.
- CHAPTER 370. — An act in relation to the accounts and records of collectors of taxes.
- CHAPTER 372. — An act in relation to proof of claims under life policies, and providing certain penalties.

- CHAPTER 377. — An act to provide for the establishment of city governments.
- CHAPTER 378. — An act relating to pensioning members of the police department of cities containing not less than seventy-five thousand inhabitants.
- CHAPTER 379. — An act to amend an act imposing a tax on collateral legacies and successions.
- CHAPTER 380. — An act to establish the salary of the reporter of decisions of the supreme judicial court, and to provide clerk hire and incidental expenses.
- CHAPTER 382. — An act relating to the duties and compensation of expert assistants appointed by the state board of arbitration and conciliation.
- CHAPTER 388. — An act relating to obstructions in buildings resorted to for the purpose of unlawful gaming.
- CHAPTER 389. — An act to require railroad corporations to provide mileage tickets which shall be accepted for passage and fare upon all railroad lines in this commonwealth.
- CHAPTER 390. — An act to authorize selectmen of towns to adopt rules and orders for the regulation and control of itinerant musicians and persons coasting in the streets.
- CHAPTER 391. — An act changing the time of the sitting of the superior court for civil business for the county of Middlesex.
- CHAPTER 399. — An act to establish the salaries of the county commissioners for the county of Norfolk.
- CHAPTER 407. — An act relating to the appointment of trustees of the hospital cottages for children.
- CHAPTER 408. — An act providing for an additional trial justice in the county of Dukes County.
- CHAPTER 409. — An act relating to lotteries and policy lotteries.
- CHAPTER 411. — An act relating to conditional sales of furniture or other household effects.
- CHAPTER 413. — An act prohibiting the appointment of persons not residents of the commonwealth as special police officers.
- CHAPTER 415. — An act relating to the assessment of damages for the laying out or alteration of highways.
- CHAPTER 422. — An act to provide for the payment of transportation of state publications furnished to free public libraries.
- CHAPTER 423. — An act authorizing the authorities of Vermont to detain and transport prisoners in and through Massachusetts.
- CHAPTER 425. — An act to provide for the building of an asylum for the chronic insane.
- CHAPTER 428. — An act relative to the discharge of small loans and the redemption of the security given for such loans.
- CHAPTER 430. — An act relating to the returns of fines, forfeitures, costs, fees and moneys by county treasurers.
- CHAPTER 435. — An act in relation to fraternal beneficiary corporations and other corporations organized for the transaction of insurance upon the assessment plan.
- CHAPTER 440. — An act relating to the equity docket of the superior court in the counties of Suffolk and Middlesex.

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- CHAPTER 23. — An act relative to temporary loans by cities and towns.
- CHAPTER 47. — An act to amend the law relative to fraternal beneficiary corporations so as to further the formation of such organizations among permanent employees of towns and cities.
- CHAPTER 54. — An act to enlarge the limits within which certain mutual fire insurance companies may do business.
- CHAPTER 59. — An act to provide conditions under which trout and trout spawn shall be furnished by the commonwealth.
- CHAPTER 61. — An act concerning appeals in suits in equity.
- CHAPTER 65. — An act in relation to public ways and laying sewers and water pipes therein.
- CHAPTER 70. — An act relating to the publication of the annual report of the board of commissioners of savings banks.
- CHAPTER 75. — An act relating to the erection of buildings in public parks.
- CHAPTER 78. — An act to provide for the extermination of insect pests.
- CHAPTER 79. — An act relative to the payment of expenses incurred under quarantine regulations.
- CHAPTER 80. — An act providing that the close season for black bass fishing shall terminate on the first day of June.
- CHAPTER 82. — An act relative to the laying out and alteration of highways.
- SECTIONS 1, 2 and 3 of CHAPTER 86. — An act relative to the state library.
- CHAPTER 95. — An act to define exemptions from the civil service rules.
- CHAPTER 99. — An act relative to the examination of reservoirs, reservoir-dams and mill-dams by county commissioners.
- CHAPTER 103. — An act to establish the salary of the third clerk in the office of the secretary of the commonwealth.
- CHAPTER 105. — An act to authorize officers qualified to serve criminal processes, and the commissioners on inland fisheries and game and their deputies, to make arrests without warrant for violation of fish and game laws.
- CHAPTER 106. — An act in relation to the granting of licenses for carrying on offensive trades.
- CHAPTER 112. — An act concerning the employment of clerks and other assistance in the department of the secretary of the commonwealth.
- SECTION 1 of CHAPTER 114. — An act to limit the time within which safe deposit, loan and trust companies shall organize and commence business.
- CHAPTER 117. — An act relating to fidelity insurance and corporate surety.
- CHAPTER 118. — An act relative to the appointment of resident agents of non-resident executors, administrators, guardians, trustees and assignees.
- CHAPTER 124. — An act authorizing advances to the commissioners of the Massachusetts nautical training school.
- CHAPTER 130. — An act to establish the salary of the second clerk of the secretary of the state board of agriculture.
- CHAPTER 131. — An act to provide for quarterly statements by railroad corporations.

- CHAPTER 133. — An act to establish the salary of the assistant district attorney for the middle district.
- CHAPTER 142. — An act to provide for compensation in cases of joint occupancy of railroad stations and grounds.
- CHAPTER 144. — An act requiring state boards and commissions to report recommendations for legislation on or before the first Wednesday in January.
- CHAPTER 148. — An act relating to the annual report of the secretary of the commonwealth.
- CHAPTER 149. — An act extending the provisions of the Public Statutes relating to the taxable valuation of vessels engaged in the foreign carrying trade.
- CHAPTER 151. — An act to authorize the judge of probate and insolvency of Franklin County to appoint an assistant register.
- CHAPTER 153. — An act to establish the salary of the fifth assistant clerk of the superior court for civil business for the county of Suffolk.
- CHAPTER 156. — An act to provide clerical assistance for the treasurer of the county of Worcester.
- CHAPTER 173. — An act relative to notice in proceedings to enforce liens upon personal property.
- CHAPTER 183. — An act relating to the taking of lobsters.
- CHAPTER 186. — An act to authorize cities to indemnify persons required to assist police officers in the discharge of their duties, for injuries received or expenses incurred while assisting such officers.
- CHAPTER 190. — An act to establish the salary of the first assistant clerk of the superior court for civil business in the county of Suffolk.
- CHAPTER 193. — An act to establish the salary of the first clerk in the office of the adjutant general.
- CHAPTER 194. — An act relative to decrees of divorce.
- CHAPTER 197. — An act extending to towns the provisions of law requiring cities to place their pauper children in families or asylums.
- CHAPTER 200. — An act relating to superintendents of public schools for small towns.
- CHAPTER 205. — An act for the better protection of the fisheries of Buzzard's bay.
- CHAPTER 208. — An act authorizing cities and towns to provide free evening lectures.
- CHAPTER 210. — An act in relation to the transportation of milk.
- CHAPTER 217. — An act relating to indigent and neglected infants in the state almshouse.
- CHAPTER 223. — An act to provide for printing the reports of the trustees of the Massachusetts hospital for dipsomaniacs and inebriates.
- CHAPTER 224. — An act relative to trust deposits with the treasurer of the commonwealth.
- CHAPTER 225. — An act to authorize cities and towns to establish and maintain public playgrounds.
- CHAPTER 226. — An act relating to the incorporation of clubs.
- CHAPTER 231. — An act to establish the salary of the additional clerk in the office of the adjutant general.
- CHAPTER 238. — An act in relation to the jurisdiction of county commissioners.
- CHAPTER 241. — An act relating to persons imprisoned for non-payment of a poll tax.
- CHAPTER 247. — An act authorizing assessors in cities of less than one hundred thousand inhabitants to use the valuation of the year preceding as a basis of taxation.
- CHAPTER 252. — An act relating to indigent and neglected children.
- CHAPTER 253. — An act placing truant officers in the city of Boston under civil service rules.
- CHAPTER 256. — An act to provide for the reimbursement of the trustees of the Massachusetts hospital for dipsomaniacs and inebriates for expenses incurred by them in the performance of their duties.
- CHAPTER 257. — An act relating to the examination of official bonds of county officers.
- CHAPTER 262. — An act relative to evidence in proceedings for neglect to support a wife or minor child.
- CHAPTER 266. — An act relative to deposits by cities and towns in banks and trust companies.
- CHAPTER 270. — An act to authorize the controller of county accounts to prescribe certain returns, certificates and vouchers.
- CHAPTER 271. — An act relating to contracts with county officers.
- CHAPTER 272. — An act relative to the distribution of the income of the school fund.
- CHAPTER 273. — An act to reimburse county commissioners for their travelling expenses.
- CHAPTER 274. — An act relative to telegraph and telephone companies.
- CHAPTER 275. — An act relating to county commissioners and their compensation.
- CHAPTER 276. — An act to establish the salaries of the county commissioners for the county of Barnstable.
- CHAPTER 279. — An act to authorize cities and towns to furnish relief to the dependent fathers and mothers of soldiers or sailors who served in the army or navy of the United States during the war of the rebellion.
- CHAPTER 280. — An act relating to decrees of divorce.
- CHAPTER 283. — An act relating to the abolition of grade crossings.
- CHAPTER 285. — An act relating to actions commenced by trustee process.
- CHAPTER 288. — An act to establish the salaries of the county commissioners for the county of Worcester.
- CHAPTER 291. — An act to establish the salaries of the county commissioners for the county of Bristol.
- CHAPTER 292. — An act relative to giving credit to students by innholders and others.
- CHAPTER 298. — An act to establish the salaries of the harbor and land commissioners.
- CHAPTER 300. — An act relative to the laying out of public parks by towns and cities.
- CHAPTER 302. — An act relative to notices from local boards of health in cases of diseases dangerous to the public health.
- CHAPTER 312. — An act relating to the repair of private drains in streets or ways.
- CHAPTER 321. — An act relative to the admission of fraternal beneficiary organizations of other states.
- CHAPTER 324. — An act relating to the trial of capital crimes.
- CHAPTER 331. — An act relative to leasing open spaces for gardens and playgrounds by cities and towns.
- CHAPTER 333. — An act relating to the officers of the Massachusetts reformatory.
- CHAPTER 340. — An act relative to quieting titles to real estate.
- CHAPTER 343. — An act fixing the times and place for holding probate courts in the county of Barnstable.
- CHAPTER 344. — An act relating to clerical assistance in the office of the register of probate and insolvency for the county of Middlesex.

- CHAPTER 345. — An act relating to the duties of district attorneys.
- CHAPTER 348. — An act fixing the times for holding probate courts in the county of Worcester.
- CHAPTER 352. — An act relating to property held for the purposes of a water supply.
- CHAPTER 355. — An act to protect the name and credit of certain educational institutions.
- CHAPTER 358. — An act to establish the salary of the first clerk in the office of the sergeant-at-arms.
- CHAPTER 359. — An act relating to the liability of employers to make compensation for personal injuries suffered by employees in their service.
- CHAPTER 365. — An act to fix the time of capital trials.
- CHAPTER 367. — An act concerning the volunteer militia.
- CHAPTER 371. — An act to provide additional clerical assistance for the clerk of the municipal court of the city of Boston for civil business.
- CHAPTER 372. — An act to provide for uniform rules of practice and procedure in the courts of probate and insolvency.
- CHAPTER 379. — An act relative to the judges of probate and insolvency for the county of Suffolk.
- CHAPTER 380. — An act relating to the apportionment of sewer assessments in cities.
- CHAPTER 385. — An act to authorize trial justices, and police, district and municipal courts to pay reasonable compensation to interpreters and witnesses from without the commonwealth.
- CHAPTER 394. — An act relating to the compensation of attorneys assigned by the court in murder cases.
- CHAPTER 396. — An act revising and consolidating the laws relating to district and police courts.
- CHAPTER 397. — An act relating to the establishment of corporations for the purpose of generating and furnishing pneumatic pressure for mechanical power.
- CHAPTER 401. — An act to provide for the payment of an allowance to families of firemen killed or fatally injured in the discharge of their duties.
- CHAPTER 403. — An act to protect trees from disfigurement.
- CHAPTER 404. — An act relating to the appointment of official stenographers.
- CHAPTER 405. — An act relating to proceedings in insolvency.
- CHAPTER 409. — An act providing additional compensation for the sergeant-at-arms' messenger detailed for duty with the treasurer and receiver general.
- CHAPTER 411. — An act to provide for the preservation of the records and history of the Grand Army of the Republic, department of Massachusetts.
- CHAPTER 414. — An act relative to the release of persons arrested for drunkenness.
- CHAPTER 419. — An act relating to the disposition of baggage retained by innholders or remaining unclaimed in their possession.
- CHAPTER 422. — An act relating to the expense of recording probate proceedings in the county of Suffolk.
- CHAPTER 423. — An act relative to the powers and duties of town officers.
- CHAPTER 424. — An act relative to a loan for the promotion of the abolition of grade crossings and a sinking fund therefor, — except so far as it relates to Sts. 1892, c. 374, 433.
- CHAPTER 426. — An act relating to certain officers in the state prison.
- CHAPTER 428. — An act requiring the commissioners of prisons to make certain reports.
- CHAPTER 431. — An act relating to clerical assistance in the office of the register of probate and insolvency for the county of Suffolk.
- CHAPTER 432. — An act relative to the collection of taxes on collateral legacies and successions.
- CHAPTER 434. — An act requiring a copy of the application to be attached to insurance policies in certain cases.
- CHAPTER 438. — An act relative to the printing of the report of the adjutant general.
- CHAPTER 439. — An act relative to the repair of uniforms and incidental expenses of the volunteer militia.
- CHAPTER 440. — An act to protect the owners of cans, bottles, boxes, siphons and fountains used in the sale of milk, cream, soda water, mineral and aerated waters, ale, beer, ginger ale or other beverages.
- CHAPTER 445. — An act relating to the overlay of taxes.
- CHAPTER 447. — An act relating to the punishment of drunkenness.
- CHAPTER 452. — An act to establish the salary of the official stenographer for the county of Middlesex.
- CHAPTER 453. — An act providing for the removal of the commissioners of prisons.
- CHAPTER 454. — An act relative to the establishment of municipal gas and electric lighting plants.
- CHAPTER 455. — An act to establish the salary of the warden of the state prison.
- CHAPTER 456. — An act to provide additional watchmen at the state prison.
- CHAPTER 460. — An act to secure the better enforcement of the laws relating to the public health.
- CHAPTER 461. — An act relative to solemnizing marriages.
- CHAPTER 462. — An act to authorize the establishment of a building line on public ways.
- CHAPTER 466. — An act relative to the punishment for rape.
- CHAPTER 469. — An act fixing the salaries of judges, registers, assistant registers and other officers of courts of probate and insolvency.
- CHAPTER 470. — An act to provide for the care and supervision of the province lands at Provincetown.
- CHAPTER 476. — An act to provide for the appointment of a highway commission to improve the public roads and to define its powers and duties.
- CHAPTER 477. — An act relative to the licensing of plumbers and the supervision of the business of plumbing.
- CHAPTER 479. — An act relating to the salaries of justices and clerks of certain municipal, district and police courts.

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- CHAPTER 16. — An act relative to the election of surveyors of highways.
- CHAPTER 17. — An act relative to the powers and duties of certain town officers.
- CHAPTER 19. — An act reducing the charges and fees for valuation of life insurance policies.
- CHAPTER 27. — An act to prevent persons from unlawfully wearing the insignia of the union veterans' union.

- CHAPTER 30. — An act relating to proceedings in insolvency.
- CHAPTER 41. — An act to provide for the blocking of railroad frogs, switches and guard rails.
- CHAPTER 58. — An act relative to the payment of superintendents of public schools for small towns.
- CHAPTER 60. — An act relative to the powers of fraternal beneficiary corporations which limit their membership to the permanent employees of the commonwealth and of towns and cities.
- SECTION 2 of CHAPTER 65. — An act to establish the office of assistant clerk of the first district court of Eastern Middlesex, — so far as it relates to salary.
- CHAPTER 66. — An act to establish the salary of the officer in attendance upon the court of probate and insolvency for the county of Suffolk.
- CHAPTER 68. — An act relative to the compensation of the official stenographer for the county of Middlesex.
- CHAPTER 83. — An act relative to surveyors of lumber and measurers of wood and bark.
- CHAPTER 97. — An act prohibiting the taking or killing of gray squirrels, hares or rabbits between the first day of March and the fifteenth day of September.
- CHAPTER 103. — An act to permit insurance companies of this commonwealth having special charters to be governed by chapter two hundred and fourteen of the acts of the year eighteen hundred and eighty-seven.
- CHAPTER 104. — An act relative to the partition of real estate by sale where the same cannot be advantageously divided.
- CHAPTER 105. — An act relating to the care of bears and other wild animals while in the public streets.
- CHAPTER 113. — An act to protect salmon fry in the Merrimac River.
- CHAPTER 117. — An act to prevent persons from unlawfully wearing the insignia of the union veteran legion.
- CHAPTER 118. — An act to abolish the regular sitting of the superior court for civil business for the county of Worcester on the Monday next after the fourth Monday of August.
- CHAPTER 120. — An act in relation to life insurance policies for the benefit of married women.
- CHAPTER 126. — An act in relation to the election of assessors or standing committees of parishes and incorporated religious societies.
- CHAPTER 127. — An act authorizing the commissioners of pilots for the harbor of Boston to consult and advise with the attorney-general on questions of law relating to their official business.
- CHAPTER 128. — An act to authorize guardians to give written leases of the real estate of their wards.
- CHAPTER 129. — An act in relation to the granting of licenses for the sale of intoxicating liquors.
- CHAPTER 130, except SECTIONS 1 and 2. — An act to abolish Fast day and to make the nineteenth day of April a legal holiday.
- CHAPTER 133. — An act in relation to accident insurance.
- CHAPTER 136. — An act to provide clerical assistance for the clerk of the supreme judicial court for the commonwealth.
- CHAPTER 137. — An act relating to reinsurance.
- CHAPTER 139. — An act relative to staying proceedings in insolvency.
- CHAPTER 142. — An act relating to the compensation of special justices and clerks pro tempore in the inferior courts.
- CHAPTER 144. — An act relating to the membership of the state board of agriculture.
- CHAPTER 145. — An act to authorize the taking of land for public library buildings.
- CHAPTER 146. — An act relative to the investment of municipal sinking funds.
- CHAPTER 147. — An act relative to insurance in foreign fire insurance companies.
- CHAPTER 151. — An act relating to vivisection and dissection in the public schools.
- CHAPTER 153. — An act to establish the salary of the sheriff of the county of Barnstable.
- CHAPTER 160. — An act in relation to the treatment of witnesses in custody.
- CHAPTER 164. — An act to give the courts of insolvency jurisdiction in equity in cases of estates of insolvent debtors.
- CHAPTER 169. — An act to change the term of the superior criminal court now holden at Fitchburg.
- CHAPTER 173. — An act relating to procedure in inferior courts.
- CHAPTER 175. — An act relative to the appointment of auditors by the superior court.
- CHAPTER 176. — An act to establish the salary of the secretary of the board of education.
- CHAPTER 180. — An act relative to intelligence offices.
- CHAPTER 181. — An act relating to the disposition of baggage retained by innholders or remaining unclaimed in their possession.
- CHAPTER 182. — An act relative to the payment of debts incurred in the establishment of municipal gas and electric lighting plants.
- CHAPTER 183. — An act relating to the accounts of registers of probate and insolvency.
- CHAPTER 189. — An act for the further protection of smelts in Boston harbor and other waters.
- CHAPTER 195. — An act regulating commitments to lunatic hospitals.
- CHAPTER 196. — An act regulating transfers between certain charitable institutions.
- CHAPTER 198. — An act to establish a law uniform with the laws of other states for a uniform standard of weights and measures.
- CHAPTER 199. — An act relative to the duties of registers of probate and insolvency.
- CHAPTER 203. — An act to provide for the appointment of receivers of the estates of absent persons in certain cases.
- CHAPTER 204. — An act relating to the trial of indictments for capital crimes.
- CHAPTER 207. — An act relating to the allowance of interest on abatements of taxes.
- CHAPTER 211. — An act relating to the extension of armories.
- CHAPTER 214. — An act relating to the removal of sick prisoners to the state farm.
- CHAPTER 216. — An act relating to the abolition of grade crossings.
- CHAPTER 220. — An act to exempt domestic fowls from taxation.
- CHAPTER 221. — An act extending the time within which certain municipal debts shall be made payable.
- CHAPTER 225. — An act to authorize the beneficiary of a life insurance policy to maintain an action thereon in his own name.

CHAPTER 228.—An act relative to returns of qualifying officers.

CHAPTER 229.—An act to authorize the reimbursement of probation officers for expenses incurred by them while in the performance of their duties.

CHAPTER 230.—An act to authorize the board of education to establish an educational museum.

CHAPTER 235.—An act relative to granting licenses to innholders and common victuallers.

CHAPTER 236.—An act to provide for reorganizing the ambulance corps of the militia.

CHAPTER 245.—An act relating to the amount of money to be advanced to the disbursing officer of the state board of lunacy and charity.

CHAPTER 249.—An act relating to the removal of prisoners from the state prison to the Massachusetts reformatory.

CHAPTER 250.—An act relative to the compensation of special county commissioners.

CHAPTER 251.—An act relative to transferring insane persons to and from the lunatic ward of the state farm.

CHAPTER 253.—An act to establish a law uniform with the laws of other states for the acknowledgment and execution of written instruments.

CHAPTER 258.—An act authorizing a deduction from the term of imprisonment of prisoners at the state farm.

CHAPTER 259.—An act relating to clerical assistance in the office of the register of probate and insolvency for the county of Worcester.

CHAPTER 260.—An act relating to sentences to the reformatory prison for women.

CHAPTER 267.—An act extending the provisions of the civil service act to towns having a population of twelve thousand inhabitants or over.

CHAPTER 270.—An act relative to the treatment of persons held in jail as witnesses.

CHAPTER 273.—An act to prohibit the transportation of male and female prisoners together.

CHAPTER 274.—An act relative to real estate held by safe deposit, loan and trust companies.

CHAPTER 280.—An act relating to the inspection and sale of imitation butter.

CHAPTER 281.—An act to provide for an additional district police officer.

CHAPTER 283.—An act to provide for a session of the superior court in the county of Suffolk for the speedy trial of certain causes.

CHAPTER 285.—An act relative to protecting persons, associations or unions of persons in their labels, trade-marks and forms of advertising.

CHAPTER 292.—An act to regulate the sale of goods marked sterling, sterling silver, coin, or coin silver.

CHAPTER 294.—An act to establish uniform forms for the return of property for taxation.

CHAPTER 297.—An act to increase the salary of the assistant district attorney for the south-eastern district.

CHAPTER 298.—An act relative to the disposition of the legislative dockets.

CHAPTER 299.—An act relative to the refusal of gas companies to furnish gas in certain cases.

CHAPTER 300.—An act relative to mutual fire insurance companies.

CHAPTER 303.—An act relative to probate accounts of administrators.

CHAPTER 304.—An act to prevent double taxation of certain machinery.

CHAPTER 308.—An act to provide for an additional associate justice of the municipal court of the city of Boston.

CHAPTER 309.—An act relating to the venue of actions for the recovery of damages done by dogs.

CHAPTER 312.—An act to establish the rank and pay of certain officers in the naval brigade.

CHAPTER 314.—An act authorizing advances to the sergeant-at-arms from the treasury of the commonwealth.

CHAPTER 316.—An act to authorize gas and electric light companies to discontinue service for non-payment of charges.

CHAPTER 317.—An act revising and consolidating the statutes relating to savings banks and institutions for savings.

CHAPTER 318.—An act relative to returns by the assessors of the city of Boston.

CHAPTER 320.—An act relating to instruction in the use of tools and in cooking in public schools.

CHAPTER 321.—An act to establish the salary of the justice of the third district court of Plymouth.

CHAPTER 322.—An act to provide additional clerical assistance in the office of the register of probate for Plymouth County.

CHAPTER 324.—An act relative to the reservation of spaces in public ways.

CHAPTER 326, except SECTION 3.—An act relating to certain contracts for the conditional sale, lease or hire of railroad and street railway equipment and rolling stock, and providing for the recording thereof.

CHAPTER 327.—An act to confer upon the board of gas and electric light commissioners certain powers in respect to regulating the price and quality of electric light.

CHAPTER 328.—An act enlarging the list of beneficiaries in fraternal beneficiary corporations in certain cases.

CHAPTER 329.—An act to provide for the examination and certification of school teachers by the state board of education.

CHAPTER 330.—An act to establish the salary of the court stenographer for the county of Bristol.

CHAPTER 333.—An act relative to the presentment of bills and notes.

CHAPTER 334.—An act to provide for a special enumeration of cities and towns in certain cases.

CHAPTER 336.—An act to establish the salary of the clerk of the second district court of Eastern Middlesex.

CHAPTER 342.—An act relating to loans by co-operative banks.

CHAPTER 349.—An act relating to the appointment of subordinate officers in the state prison and the Massachusetts reformatory.

CHAPTER 350.—An act prohibiting the issue of stock or scrip dividends by corporations.

CHAPTER 352.—An act to establish the salary of the judge of probate and insolvency for the county of Hampden.

CHAPTER 354.—An act to authorize the abatement of taxes on personal property assessed to executors, administrators or trustees in certain cases.

CHAPTER 355.—An act relating to the supervision of vaccine institutions.

CHAPTER 357.—An act relative to claiming trial by jury.

SECTION 2 of CHAPTER 363.—An act providing for a clerk for the municipal court of the Brighton district of the city of Boston.

CHAPTER 367.—An act relating to fraternal beneficiary organizations.

- CHAPTER 368. — An act to provide for the care of persons placed on probation by the courts.
- CHAPTER 370. — An act relating to the compensation of officers of the state prison.
- CHAPTER 372. — An act providing for the appointment of probation officers pro tempore.
- CHAPTER 373. — An act to establish the salary of the justice of the police court of Lee.
- CHAPTER 374. — An act to establish the salary of the clerk of the district court of Southern Berkshire.
- CHAPTER 375. — An act relative to the bond of the treasurer of the Massachusetts state firemen's association.
- CHAPTER 376. — An act providing for the appointment of delegates to represent the commonwealth at certain conventions.
- CHAPTER 377. — An act relative to the duties of judges of probate and insolvency.
- CHAPTER 379. — An act to establish the salary of the assistant clerk of the municipal court of the South Boston district of the city of Boston.
- CHAPTER 380. — An act relative to the payment of the capital stock of aqueduct and water companies.
- CHAPTER 381. — An act relative to the admission of certain foreign corporations to do business in this commonwealth.
- CHAPTER 382. — An act relative to the construction of buildings to be used as theatres.
- CHAPTER 383. — An act regulating the withdrawal of free checks or free transfers by street railway companies.
- CHAPTER 384. — An act to provide for notice to absent defendants in certain cases.
- CHAPTER 388. — An act relative to sureties upon bonds of persons licensed to sell intoxicating liquors.
- CHAPTER 389. — An act relative to notices in cases of injuries to persons or property.
- CHAPTER 393. — An act relative to the printing and distribution of the laws and public documents.
- CHAPTER 394. — An act to establish the salaries of the assistant clerk of the senate and the assistant clerk of the house of representatives.
- CHAPTER 397. — An act relating to clerical assistance in the office of the auditor of the commonwealth.
- CHAPTER 398. — An act relative to the jurisdiction and process of district and police courts.
- CHAPTER 399. — An act concerning the storage of petroleum or any of its products and the erection and use of buildings therefor.
- CHAPTER 401. — An act concerning the marriage of minors.
- CHAPTER 405. — An act relative to furnishing a copy of the declaration to the defendant or his attorney.
- CHAPTER 406. — An act relative to the compensation of persons held in jail as witnesses.
- CHAPTER 409. — An act relative to marriages and the issuing of certificates therefor.
- SECTION 1 of CHAPTER 410. — An act to provide for the disposition of property seized in gaming houses or pool rooms.
- CHAPTER 412. — An act relative to exceptions in the supreme judicial and superior courts in certain cases.
- CHAPTER 415. — An act to establish the salary of the sheriff of the county of Essex.
- CHAPTER 422. — An act relative to notices in cases of injuries received on highways.
- CHAPTER 424. — An act relating to official stenographers of the superior court.
- CHAPTER 425. — An act relative to the inspection of milk.
- CHAPTER 427. — An act to amend chapter three hundred and thirty-three of the acts of the year eighteen hundred and ninety-four, relative to the presentment of bills and notes.
- CHAPTER 428. — An act to provide for the appointment of boards of license commissioners and to define their powers and duties.
- CHAPTER 429. — An act to regulate the sale of coal.
- CHAPTER 431. — An act relative to the police, district and municipal courts in the county of Suffolk.
- CHAPTER 432. — An act relative to the submission of the question of establishing municipal lighting plants to popular vote.
- CHAPTER 433. — An act relating to offences against chastity, morality, decency and good order.
- CHAPTER 437. — An act relative to the intimidation of laborers.
- CHAPTER 440. — An act relative to the release of prisoners from the state prison on parole.
- CHAPTER 442. — An act requiring life insurance companies to fully define the terms of the contract in policies issued by them.
- CHAPTER 444. — An act to establish the office of state fire marshal.
- CHAPTER 448. — An act to authorize the submission of the question of the establishment of a municipal lighting plant to the voters of a city at a special election.
- CHAPTER 450, except SECTION 4. — An act relative to the issue of stock and bonds by gas and electric light companies.
- CHAPTER 451. — An act in relation to contracts for prison labor.
- CHAPTER 452. — An act relative to the issue of capital stock and bonds by telegraph, telephone, aqueduct and water companies.
- CHAPTER 455. — An act relative to the licensing of plumbers and the supervision of the business of plumbing.
- SECTIONS 6 and 7 of CHAPTER 457. — An act to establish additional state normal schools.
- CHAPTER 458. — An act to provide for the registration of physicians and surgeons.
- CHAPTER 460. — An act relative to the employment of prisoners in the manufacture of reed or rattan goods.
- CHAPTER 461. — An act to prevent the mutilation of horses.
- CHAPTER 462, except SECTION 4. — An act relative to the issue of stock and bonds by railroad and street railway companies.
- CHAPTER 469. — An act relative to the transaction of express business within the commonwealth upon railroad and steamboat lines.
- CHAPTER 470. — An act to establish the salaries of the justice and clerk of the police court of Chelsea.
- CHAPTER 472. — An act relating to the increase of capital stock by corporations owning or operating a railroad or railway by steam or other power, and of gaslight, electric light, telegraph, telephone, aqueduct and water companies.
- CHAPTER 473. — An act relative to the election of boards of health in towns.
- CHAPTER 476. — An act to prohibit foreign corporations from issuing stock or other securities upon the property, franchise or stock of certain domestic corporations.

- CHAPTER 477. — An act relative to certain officers of the state prison.
- CHAPTER 479. — An act to regulate the use of bicycles and similar vehicles.
- CHAPTER 481. — An act in relation to the inspection department of the district police and the inspection of buildings.
- CHAPTER 484. — An act relating to the annual report of the tax commissioner.
- CHAPTER 489. — An act relative to the sale of cider and native wines.
- CHAPTER 490. — An act to exempt property in the hands of foreign executors, administrators and trustees from double taxation.
- CHAPTER 491. — An act to codify and consolidate the laws relating to contagious diseases among domestic animals.
- CHAPTER 493. — An act establishing the fee for physicians' certificates in cases of commitments to insane asylums.
- CHAPTER 496. — An act relative to the discharge of insolvent debtors.
- CHAPTER 497, except SECTIONS 8 and 9. — An act relating to state highways.
- CHAPTER 498. — An act relative to the attendance of children in the schools.
- CHAPTER 499. — An act relating to the liability of employers to make compensation for personal injuries suffered by employees in their service.
- CHAPTER 500. — An act relating to the par value of shares of the capital stock of certain corporations.
- CHAPTER 502. — An act relative to the increase of the capital stock and bonds of railroad corporations.
- CHAPTER 505. — An act relative to proceedings to prevent the commission of crime.
- CHAPTER 506. — An act relating to leases and consolidations of railroad and street railway companies.
- CHAPTER 508. — An act regulating the employment of labor.
- CHAPTER 511. — An act to provide hospital accommodations for the care and treatment of persons suffering from contagious diseases in cities.
- CHAPTER 514. — An act relative to the selection of jurors.
- CHAPTER 515. — An act relative to vaccination.
- CHAPTER 522. — An act to amend and codify the statutes relating to insurance.
- CHAPTER 525. — An act relative to itinerant vendors.
- CHAPTER 527. — An act relative to the judges of probate and insolvency for the county of Middlesex.
- CHAPTER 528. — An act to define the lien created by sewer assessments in certain cases.
- SECTION 6 OF CHAPTER 532. — An act to provide an open space on the east side of the state house.
- CHAPTER 533. — An act to authorize cities and towns to furnish gas and electricity for motive power and heating purposes.
- CHAPTER 534. — An act requiring specifications to be furnished to persons employed in cotton factories.
- CHAPTER 535. — An act to provide for the appointment of steam railroad inspectors.
- CHAPTER 536. — An act relative to personal liberty.
- CHAPTER 537. — An act relative to the sale of land for taxes.
- CHAPTER 538. — An act relative to the purchase of existing gas and electric lighting plants by cities and towns.
- CHAPTER 541. — An act relative to foreign corporations having a usual place of business in this commonwealth.
- CHAPTER 542. — An act relative to gaming and the illegal keeping and sale of intoxicating liquor by incorporated clubs.
- CHAPTER 545. — An act relative to the payment to the commonwealth by cities and towns of the amount of expense apportioned to them in the abolition of grade crossings.
- CHAPTER 547. — An act relative to the speedy trial of certain causes in the superior court for the county of Suffolk.
- RES. CHAPTER 90. — Resolve relative to increasing the Massachusetts school fund.

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- CHAPTER 10. — An act authorizing advances to the sergeant-at-arms from the treasury of the commonwealth.
- CHAPTER 11. — An act to provide for the appointment of additional pages.
- CHAPTER 28. — An act to establish the standard weight of the bushel of onions.
- CHAPTER 34. — An act to authorize advances on account of monthly salaries paid from the treasury.
- CHAPTER 46. — An act relative to the registration of agents of domestic insurance companies.
- CHAPTER 54. — An act providing for additional copies of part second of the report of the insurance commissioner.
- CHAPTER 56. — An act to authorize the commissioners on inland fisheries and game to propagate birds and animals.
- CHAPTER 59. — An act relative to the hazard to be assumed by insurance companies, the licensing of brokers and the form of the standard policy.
- CHAPTER 66. — An act to authorize the board of commissioners of savings banks to employ additional expert and clerical assistants.
- CHAPTER 75. — An act relative to the allowance of interest on abatements of taxes made by the superior court.
- CHAPTER 81. — An act to authorize the employment of an actuary in the insurance department.
- SECTION 2 OF CHAPTER 88. — An act to remove the restrictions upon shad and alewife fishing in the Merrimac River.
- CHAPTER 93. — An act providing for the payment of postage and expressage on documents sent to members of the general court.
- CHAPTER 94. — An act to authorize towns to pay the tuition of children attending certain academies in towns in which there is no high school.
- CHAPTER 96. — An act providing for additional copies of the report of the attorney-general.
- CHAPTER 103. — An act relative to the abolition of grade crossings.
- CHAPTER 104. — An act relative to change of name by fraternal beneficiary corporations.
- CHAPTER 105. — An act to authorize an increase in the number of members of standing committees of churches.
- CHAPTER 106. — An act relative to boarding vessels arriving in Gloucester harbor.

- CHAPTER 111. — An act to require advertisements for proposals for county loans.
- CHAPTER 112. — An act relative to the compensation of special county commissioners.
- CHAPTER 113. — An act authorizing the treasurer of the county of Worcester to employ additional clerical assistance.
- CHAPTER 115. — An act relative to flags upon public buildings and schoolhouses.
- CHAPTER 116. — An act relative to jury trials in equity and probate causes.
- CHAPTER 117. — An act fixing the time when liens for the annual rents for the use of common sewers shall attach to real estate.
- CHAPTER 120. — An act to equalize the right of challenge of the commonwealth and defendants accused of crime.
- CHAPTER 125. — An act to provide additional clerical assistance for the clerk of the municipal court of the city of Boston, for civil business.
- CHAPTER 127. — An act to extend the power of cities and towns to adopt the provisions of chapter two hundred and forty-five of the acts of the year eighteen hundred and ninety-two relative to sewers.
- CHAPTER 129. — An act relative to the employment of labor.
- CHAPTER 132. — An act to provide clerical and messenger service for the board of education.
- CHAPTER 133. — An act to provide clerical assistance for the treasurer of the county of Norfolk.
- CHAPTER 134. — An act relative to the distribution of legacies.
- CHAPTER 136. — An act relative to the heating of street railway cars.
- CHAPTER 140. — An act relative to mortgages of real estate by administrators.
- CHAPTER 141. — An act relative to the removal of persons and property unlawfully occupying the premises of the state prison, Massachusetts reformatory and reformatory prison for women.
- CHAPTER 142. — An act to authorize women to hold the office of assistant town or city clerk.
- CHAPTER 144. — An act requiring specifications to be furnished to persons employed in cotton, worsted and woollen factories.
- CHAPTER 146. — An act relative to exercise for unemployed convicts in county prisons.
- CHAPTER 153. — An act to extend the time for filing exceptions in the supreme judicial and superior courts.
- CHAPTER 157. — An act relative to the liabilities of officers and stockholders of foreign corporations doing business in this commonwealth.
- CHAPTER 159. — An act to exempt veteran soldiers and sailors from the payment of fees for certificates of authority to act as insurance brokers.
- CHAPTER 162. — An act relative to the disposition of fines imposed for publishing or distributing obscene literature.
- CHAPTER 164. — An act to authorize savings banks to invest in and loan upon bonds of the states of Missouri and Minnesota and the cities thereof.
- CHAPTER 169. — An act to establish the fees to be paid by corporations for filing and recording certain certificates.
- CHAPTER 171. — An act relative to annual returns of co-operative banks.
- CHAPTER 172. — An act relative to fines which may be charged by co-operative banks.
- CHAPTER 173. — An act to prohibit the obstruction of highways by the receivers and assignees of railroad corporations.
- CHAPTER 174. — An act relative to additional clerical assistance in the office of the register of probate and insolvency for the county of Essex.
- CHAPTER 175. — An act to provide for the appointment of a first deputy controller of county accounts.
- SECTION 2 of CHAPTER 176. — An act to establish the fourth district court of Berkshire, — so far as it relates to salaries.
- CHAPTER 181. — An act requiring school committees to furnish the public schools with national flags.
- CHAPTER 183. — An act to authorize the sale of estates subject to remainder.
- CHAPTER 186. — An act relative to the watering of streets in towns.
- CHAPTER 190. — An act relative to mutual fire insurance companies with a guaranty capital.
- CHAPTER 193. — An act to fix the compensation of the doorkeepers, assistant doorkeepers, postmaster, messengers and pages of the senate and house of representatives.
- CHAPTER 194. — An act to provide for the seizure and disposition of property found where opium is smoked or sold or given away to be smoked, and for the arrest and punishment of persons there found present.
- CHAPTER 195. — An act to provide for the medical supervision of prisoners confined in solitary cells for punishment, in county prisons.
- CHAPTER 199. — An act for the protection of pickerel in the county of Berkshire.
- CHAPTER 201. — An act relative to banking hours on Saturdays which are not holidays.
- CHAPTER 209. — An act relative to insolvent debtors.
- CHAPTER 210. — An act relative to accounts in probate courts.
- CHAPTER 213. — An act relative to the licensing and regulating of stables in cities.
- CHAPTER 214. — An act to increase the annual appropriation for the work of the dairy bureau of the state board of agriculture.
- CHAPTER 215. — An act relative to the jurisdiction of probate courts and courts of insolvency.
- CHAPTER 217. — An act to authorize cities and towns to pay interest on public gifts in certain cases.
- CHAPTER 218. — An act relative to sentences to the reformatory prison for women.
- CHAPTER 224. — An act relative to certain discretionary sentences and commitments to the house of industry in Boston.
- CHAPTER 227. — An act relative to laying sewers in private streets.
- CHAPTER 228. — An act to provide greater security against accidents from electric wires.
- CHAPTER 234. — An act relative to the vacation of judgments and writs of and petitions for review.
- CHAPTER 238. — An act to provide copies of the blue book for the use of the supreme judicial and superior courts.
- CHAPTER 243. — An act relative to the issue and cancellation of certain bonds by cities.
- CHAPTER 245. — An act to establish the compensation of clerks pro tempore of police, district and municipal courts.
- CHAPTER 246. — An act to establish the number of officers in attendance upon the supreme judicial, superior and probate courts for the county of Middlesex and to establish their salaries.

- CHAPTER 250.—An act relative to the printing and distribution of the blue book.
- CHAPTER 251.—An act providing for an assistant clerk of the superior court for equity business in the county of Suffolk.
- CHAPTER 252.—An act relative to the release of prisoners from the state prison on parole.
- CHAPTER 253.—An act to provide for teaching illiterate prisoners.
- CHAPTER 260.—An act to provide extra clerical assistance for the clerk of the central district court of Worcester.
- CHAPTER 263.—An act relative to the maximum insurable age in cases of accident insurance.
- CHAPTER 271.—An act relative to warranties in life insurance policies.
- CHAPTER 273.—An act to provide for the removal of prisoners committed to county prisons by United States courts.
- CHAPTER 276.—An act to authorize the employment of a legacy tax clerk in the treasury department.
- CHAPTER 277.—An act to authorize the sale, during February and March, of certain trout artificially reared.
- CHAPTER 282.—An act relative to oyster culture.
- CHAPTER 284.—An act in relation to the care and custody of the state house.
- CHAPTER 286.—An act relative to the commitment of insane persons.
- CHAPTER 288.—An act relative to the accounts of trustees and guardians.
- CHAPTER 290.—An act to authorize the bureau of statistics of labor to print and distribute a bulletin.
- CHAPTER 293.—An act relative to damages from fires communicated by locomotive engines.
- CHAPTER 295.—An act relative to expenditures by fire districts.
- CHAPTER 296.—An act to authorize cities and towns to regulate the width of tires used on highways within their limits.
- CHAPTER 300.—An act relative to the taxation of corporations formed to construct railroads, or railroads and telegraphs, in foreign countries.
- CHAPTER 307.—An act relative to taxes on collateral legacies and successions.
- CHAPTER 310.—An act to provide for the appointment of a special district police officer.
- CHAPTER 311, except SECTION 3.—An act relative to foreign corporations selling or negotiating bonds, mortgages, notes or other choses in action.
- CHAPTER 313.—An act to provide an assistant clerk for the board of railroad commissioners.
- CHAPTER 316.—An act to authorize street railway companies to acquire and hold real estate to be used for purposes of recreation and for pleasure resorts.
- CHAPTER 318.—An act to protect the public from annoyance and injury while travelling on street railways.
- CHAPTER 322.—An act relative to the tenure of office of the general superintendent of prisons.
- CHAPTER 330.—An act relative to injuries to the property of electric light companies and the unlawful diversion and use of electricity.
- CHAPTER 332.—An act relative to boards of health in cities.
- CHAPTER 337.—An act to prohibit the sale of intoxicating liquor on the twenty-second day of February and the fourth day of July.
- CHAPTER 338.—An act to authorize cities to provide for the inspection of ice, and to prevent the sale of impure ice.
- CHAPTER 340.—An act relative to the closing of the affairs of certain fraternal beneficiary and assessment corporations.
- CHAPTER 348.—An act relative to public warehousemen.
- CHAPTER 350.—An act relative to the transmission of electricity for the purposes of heating and power.
- CHAPTER 351.—An act to provide for the payment of bounties to chartered poultry associations in certain cases.
- CHAPTER 356.—An act to authorize railroad corporations to file a location of lands purchased for railroad purposes.
- CHAPTER 361.—An act to make certain army nurses eligible to receive state aid.
- CHAPTER 362.—An act to require locomotives and cars used in traffic within the commonwealth to be equipped with certain safety appliances.
- CHAPTER 364.—An act to provide for additional clerical assistance in the office of the register of probate and insolvency for the county of Suffolk.
- CHAPTER 366.—An act relative to the issuing of life insurance policies without previous medical examination.
- CHAPTER 369.—An act establishing the compensation to be allowed deputy sheriffs for attending sittings of the supreme judicial and superior courts in certain counties.
- CHAPTER 372.—An act relative to the forwarding by clerks of courts of certain papers to the attorney-general.
- CHAPTER 373.—An act relative to the right of state officials to consult with the attorney-general.
- CHAPTER 375.—An act relative to the reimbursement of certain towns for expenses incurred in the maintenance of the insane at the state almshouse and the state farm.
- CHAPTER 376.—An act to authorize the appointment of a registrar of labor.
- CHAPTER 378.—An act relative to fenders and wheel guards on street railway cars.
- SECTION 1 of CHAPTER 379.—An act to make notaries public and justices of the peace eligible for the office of license commissioner.
- CHAPTER 380.—An act relative to executions issued by trial justices.
- CHAPTER 383.—An act relative to the agent for aiding discharged prisoners.
- CHAPTER 385.—An act relative to the feeding of food animals with garbage, refuse or offal.
- CHAPTER 387.—An act to authorize certain foreign manufacturing corporations to hold real estate.
- CHAPTER 388.—An act relative to the approval of sureties on replevin bonds.
- CHAPTER 390.—An act to establish an asylum for insane criminals at Bridgewater and to regulate commitments and removals to the same.
- CHAPTER 392.—An act to authorize the employment of an assistant bookkeeper in the treasury department.
- CHAPTER 393.—An act to authorize the appointment of an assistant clerk of the superior court, civil session, for the county of Suffolk.
- CHAPTER 394.—An act relative to fees in insolvency cases.
- CHAPTER 396.—An act to provide for an additional district police officer.

- CHAPTER 400. — An act to require cities to provide for the treatment of persons suffering from contagious diseases in certain cases.
- CHAPTER 402. — An act to authorize the secretary of the commonwealth to employ additional clerical and other assistance.
- CHAPTER 404. — An act relative to the approval of sureties on bonds to dissolve mechanics' liens.
- CHAPTER 410. — An act relative to legislative counsel and agents.
- CHAPTER 412. — An act relative to the registration of physicians and surgeons.
- CHAPTER 415. — An act to regulate banking hours on Saturdays which are not holidays.
- CHAPTER 418. — An act relative to the inspection of steam boilers.
- CHAPTER 419. — An act relative to gaming.
- CHAPTER 420. — An act relative to the sale of electricity for heating and cooking.
- CHAPTER 424. — An act providing for the payment of the salaries of assistant district-attorneys from the treasury of the commonwealth.
- CHAPTER 426, except SECTION 3. — An act relative to crossings of railroads and street railways at grade.
- CHAPTER 427. — An act relative to marriage and the legitimacy of children.
- CHAPTER 428. — An act relative to children in the care of the state.
- CHAPTER 429. — An act relative to physicians' certificates for the commitment of insane persons.
- CHAPTER 430. — An act relative to taxes on collateral legacies and successions.
- CHAPTER 431. — An act to provide additional clerical assistance for the commissioners of prisons.
- CHAPTER 432. — An act relative to the limitation of actions by and against assignees in insolvency.
- CHAPTER 434. — An act to regulate the observance of the Lord's day.
- CHAPTER 437. — An act relative to the record of executions levied upon real estate.
- CHAPTER 438. — An act relative to the weekly payment of wages.
- CHAPTER 444. — An act relative to sidewalks in cities.
- CHAPTER 445. — An act relative to persons receiving public aid.
- CHAPTER 452. — An act establishing the salaries of the employees in the office of the state fire marshal.
- CHAPTER 453. — An act relative to plumbing.
- CHAPTER 456. — An act to exempt veteran soldiers and sailors from the payment of fees for auctioneers' licenses.
- CHAPTER 457. — An act to provide for the appointment of officers of the municipal court of the city of Boston.
- CHAPTER 459. — An act to provide clerical assistance for the register of probate and insolvency for the county of Middlesex.
- CHAPTER 460. — An act relative to the acknowledgment and proof of written instruments.
- CHAPTER 461. — An act relative to discriminations in public places on account of race or color.
- CHAPTER 462. — An act to protect manufacturers from the use of counterfeit labels and stamps.
- CHAPTER 463. — An act relative to the annual expenditures and report of the board of gas and electric light commissioners.
- CHAPTER 465. — An act to increase the efficiency of the militia.
- CHAPTER 469. — An act relative to sentence in criminal cases.
- CHAPTER 471. — An act to regulate steam engineering.
- CHAPTER 474. — An act providing for certain classes of property insurance.
- CHAPTER 475. — An act relative to the establishment of textile schools.
- CHAPTER 476. — An act relative to the compensation of inspectors of animals and provisions.
- CHAPTER 480. — An act relative to the appointment of a sixth assistant clerk of the superior court, civil session, for the county of Suffolk.
- CHAPTER 481. — An act to protect the business of licensed carriers of goods for hire.
- CHAPTER 483, except SECTION 13. — An act to establish the Massachusetts hospital for epileptics.
- CHAPTER 493. — An act establishing the salaries of registers and assistant registers of deeds, and providing for the payment of fees received by them to the several counties.
- CHAPTER 496. — An act relative to inspection of domestic animals.
- CHAPTER 497. — An act to regulate the making of loans upon deposits or pledges of personal property.
- CHAPTER 500. — An act to establish the salary of the clerk of the police court of the city of Brockton.
- CHAPTER 503, except SECTION 12. — An act to establish the Massachusetts hospital for consumptives and tubercular patients.
- CHAPTER 504. — An act relative to sentences to the state prison.

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- CHAPTER 86. — An act relative to the printing of the reports of the civil service commission.
- CHAPTER 96. — An act to authorize certain charitable, educational and other corporations to hold additional real and personal estate.
- CHAPTER 102. — An act concerning fraternal beneficiary organizations.
- CHAPTER 108. — An act relative to taxes on collateral legacies and successions.
- CHAPTER 124. — An act to authorize foreign burglary insurance companies to transact business in this commonwealth.
- CHAPTER 126. — An act relative to mutual companies with a guaranty capital.
- CHAPTER 128. — An act relative to the date for sending to the controller of county accounts copies of estimates for county taxes.
- CHAPTER 133. — An act to provide for the receipt and payment of money for the support of practice and model schools.
- CHAPTER 136. — An act in relation to certain organizations paying only funeral and sick benefits.
- CHAPTER 137. — An act in relation to the compensation of referees appointed by the insurance commissioner.
- CHAPTER 140. — An act to extend the powers of fire insurance companies.

- CHAPTER 147. — An act relative to clerical assistance for the treasurer of the county of Essex.
- CHAPTER 152. — An act to authorize towns to appropriate money for the celebration of the fourth of July.
- CHAPTER 158. — An act relative to the apportionment of assessments for betterments.
- CHAPTER 162. — An act to provide that when the nineteenth day of April occurs on Sunday the following day shall be a public holiday.
- CHAPTER 169. — An act relative to sureties upon bonds of persons licensed to sell intoxicating liquors.
- CHAPTER 171. — An act to authorize insurance companies to make additional investments of their capital stock.
- CHAPTER 172. — An act to provide that payment for assistant registers whose salaries are not fixed by law, and for clerical assistance in registries of deeds, shall be subject to the approval of the board of county commissioners.
- CHAPTER 176. — An act to reimburse the treasurers of the counties of Bristol, Essex, Middlesex and Worcester for their travelling expenses.
- CHAPTER 178. — An act to authorize additional investments by savings banks and institutions for savings.
- CHAPTER 179. — An act relating to the returns of school committees to the state board of education.
- CHAPTER 182. — An act relative to the naval brigade of the militia of the commonwealth.
- CHAPTER 186. — An act relative to teachers' institutes.
- CHAPTER 189. — An act to provide for printing additional copies of the report of the treasurer and receiver general.
- CHAPTER 190. — An act to provide for the preservation of public shade trees, and to authorize towns to elect tree wardens.
- CHAPTER 193. — An act relative to the calling in of books of deposit by savings banks and institutions for savings.
- CHAPTER 199. — An act relative to parks.
- CHAPTER 203. — An act relative to foreclosures of power of sale mortgages.
- CHAPTER 208. — An act relative to suits on probate bonds.
- CHAPTER 218. — An act to authorize the appointment of an additional assistant clerk of courts for the county of Middlesex.
- CHAPTER 219. — An act relating to clerical assistance in the office of the register of probate and insolvency for the county of Hampden.
- CHAPTER 220. — An act relating to trials in inferior courts.
- CHAPTER 221. — An act to provide for additional copies of the report of the harbor and land commissioners.
- CHAPTER 223. — An act to provide for printing the annual report of the metropolitan sewerage commissioners.
- CHAPTER 225. — An act relative to the evidence of regularity of the appointment of railroad and steamboat police.
- CHAPTER 229. — An act relative to black bass fishing.
- CHAPTER 230. — An act relative to the registration of physicians and surgeons.
- CHAPTER 231. — An act to require savings banks and institutions for savings to make extra dividends in certain cases.
- CHAPTER 234. — An act to provide for an additional special justice of the municipal court of the city of Boston.
- CHAPTER 236. — An act relative to the collection of sewer assessments and charges.
- CHAPTER 241. — An act relative to the weekly payment of wages.
- CHAPTER 247. — An act relative to arrest on mesne process and execution.
- CHAPTER 248. — An act relative to the supervision of the state printing.
- CHAPTER 251. — An act relative to the collection of sewer and sidewalk assessments.
- CHAPTER 252. — An act relative to the pollution of sources of water supply.
- CHAPTER 253. — An act relative to directors of domestic stock insurance companies.
- CHAPTER 254. — An act relative to the tenure of office of members of the state board of agriculture.
- CHAPTER 256. — An act relative to appointments in the Boston fire department.
- CHAPTER 258. — An act relative to illustrations in reports made to the governor or to the general court.
- CHAPTER 264. — An act to regulate the sale of condensed milk.
- CHAPTER 268. — An act relative to the taking of scallops.
- CHAPTER 269. — An act relative to the issue of notes, bonds and scrip by cities and towns.
- CHAPTER 270. — An act relative to the admission of mutual fire insurance companies to transact business in this commonwealth.
- CHAPTER 272. — An act to prevent the sale of adulterated spirituous or intoxicating liquor.
- CHAPTER 275. — An act relative to the water supply of the reformatory prison for women.
- CHAPTER 277. — An act relative to loans by co-operative banks.
- CHAPTER 279. — An act relative to the burial of deceased indigent soldiers, sailors or marines who served in the army or navy of the United States during the war of the rebellion, and to the burial of their wives and widows.
- CHAPTER 280. — An act relative to temporary loans by fire districts.
- CHAPTER 285. — An act relative to the forfeiture of shares in co-operative banks.
- CHAPTER 286. — An act relative to the transaction of the business of co-operative banking by foreign corporations.
- CHAPTER 288. — An act relative to minor children indentured or placed in charge of persons, associations or institutions.
- CHAPTER 291. — An act to authorize towns to make appropriations to meet the expense of dedicating soldiers' monuments.
- CHAPTER 297. — An act to regulate the sale of commercial fertilizers.
- CHAPTER 302. — An act relative to reports of evidence given at inquests in cases of death by accident on railroads and street railways.
- CHAPTER 303. — An act relative to the investigation of fires and the report to the fire marshal.
- CHAPTER 304. — An act relative to sentences to the reformatory prison for women.
- CHAPTER 306. — An act relative to marriages.

- CHAPTER 308. — An act to prohibit the selling or giving away of intoxicating liquors on certain holidays by the holders of fourth and fifth class licenses.
- CHAPTER 313. — An act relative to the building line and height of buildings on parkways, boulevards and parks.
- CHAPTER 314. — An act to provide for the appointment of a reserve police force in cities.
- CHAPTER 316. — An act relative to the travelling expenses of judges and registers of probate and insolvency.
- CHAPTER 317. — An act relative to removals from the reformatory prison for women.
- CHAPTER 326. — An act relative to extra clerical assistance in the office of the treasurer and receiver general of the commonwealth.
- CHAPTER 327. — An act to impose a penalty for refusal to make reports or for making false reports to the board of commissioners of savings banks.
- CHAPTER 332. — An act relative to the licensing and regulating of stables in cities.
- CHAPTER 334. — An act relative to the weekly payment of wages by contractors.
- CHAPTER 335. — An act to authorize the appointment of an examiner for the insurance department.
- CHAPTER 337. — An act providing for a clerk for the district court of Eastern Hampden.
- CHAPTER 338. — An act relative to accidents from gas or electricity.
- CHAPTER 339. — An act to prevent immoral shows and entertainments.
- CHAPTER 342. — An act relative to legislative counsel and agents.
- CHAPTER 343. — An act regulating the placing of traversing machinery in cotton factories.
- CHAPTER 344. — An act to provide for the punishment of convicts who wilfully destroy property at the state prison, reformatories and houses of correction.
- CHAPTER 345. — An act relative to state highways.
- CHAPTER 346. — An act relative to the bonds of treasurers of manufacturing and other corporations.
- CHAPTER 347. — An act relative to the salary of the lieutenant governor.
- CHAPTER 348. — An act relative to service medals in the militia.
- SECTION 2 OF CHAPTER 353. — An act to establish the district court of Franklin.
- CHAPTER 355. — An act relative to appeals by municipal corporations.
- CHAPTER 356. — An act to require gas and electric light companies to keep uniform station records.
- CHAPTER 361. — An act relative to the bonds of treasurers and employees of savings banks and institutions for savings, and co-operative banks.
- CHAPTER 369. — An act relative to annual returns from certain corporations.
- CHAPTER 377. — An act relative to the sale of imitation butter.
- CHAPTER 380. — An act relative to vacancies in the office of mayor.
- CHAPTER 381. — An act relative to the presentation of certain petitions to the general court.
- CHAPTER 384. — An act relative to the votes and proceedings of county commissioners.
- CHAPTER 385. — An act relative to tramps.
- CHAPTER 388. — An act to authorize the revocation or revision of orders requiring recognizances.
- CHAPTER 389. — An act relative to larceny committed in buildings, or on ships and vessels.
- CHAPTER 391. — An act relative to the paying in of capital stock and to the liability of officers and stockholders of foreign corporations doing business in this commonwealth.
- CHAPTER 396. — An act relative to the removal of license commissioners.
- CHAPTER 397. — An act to regulate the practice of pharmacy.
- CHAPTER 398. — An act relative to the inspection and standard of milk.
- CHAPTER 401. — An act relative to trial lists and to notifying attorneys of trials in the superior court.
- CHAPTER 402. — An act relative to bonds given by agents of foreign insurance companies.
- CHAPTER 404. — An act relative to liens on vessels.
- CHAPTER 408. — An act relative to the salaries of public school teachers in small towns.
- CHAPTER 409. — An act in relation to the increase of the capital stock of street railway companies.
- CHAPTER 412. — An act relative to the sittings of the superior court for the county of Essex.
- CHAPTER 413. — An act providing for the performance of clerical duties in the superior court sitting at Boston for the hearing of cases for counties other than Suffolk.
- CHAPTER 418. — An act relative to bakeries and persons employed therein.
- CHAPTER 422. — An act relative to boxing matches.
- CHAPTER 423. — An act relative to safe deposit, loan and trust companies.
- CHAPTER 424. — An act relative to the qualifications of firemen.
- CHAPTER 425. — An act relative to discharges from the volunteer militia.
- CHAPTER 426. — An act relative to the duties and jurisdiction of the board of gas and electric light commissioners.
- CHAPTER 427. — An act to exempt certain officers of courts from serving as jurors.
- CHAPTER 429. — An act relative to agents of the state board of education.
- CHAPTER 439. — An act relative to the payment by the commonwealth of the expenses apportioned to it in the abolition of grade crossings.
- CHAPTER 443. — An act relative to registers of deeds.
- CHAPTER 444. — An act to facilitate the collection of small debts for manual work or labor performed.
- CHAPTER 445. — An act relative to evidence in actions against the estates of deceased persons.
- CHAPTER 447. — An act to authorize credit insurance companies to do business in this commonwealth.
- CHAPTER 448. — An act relative to insurance brokers.
- CHAPTER 449. — An act relative to the employment of laborers in the cities of the commonwealth.
- CHAPTER 451. — An act relative to the filling of exceptions in the supreme judicial and superior courts.
- CHAPTER 455. — An act to authorize cities and towns to appropriate money for memorial observances in honor of firemen.
- CHAPTER 456. — An act providing for the appointment of guardian ad litem or next friend in certain cases.
- CHAPTER 459. — An act providing for the appointment of an official stenographer for the superior court, criminal session, in the county of Suffolk.
- CHAPTER 464. — An act relative to the levy of executions on real estate.

- CHAPTER 470.—An act relative to the surrender value of endowment policies.
- CHAPTER 473.—An act relative to the issue of stock and bonds by gas and electric light companies.
- CHAPTER 476.—An act providing for the appointment of special commissioners.
- CHAPTER 477.—An act to authorize towns to appropriate money for the purpose of marking spots of historic interest.
- CHAPTER 480.—An act relative to station records required to be kept by companies engaged in the supply either of gas or of electricity for lighting.
- CHAPTER 482.—An act relative to transfers of the insane.
- CHAPTER 490.—An act relative to the duties and authority of the attorney-general and to the employment of attorneys by state boards, commissioners and officers.
- CHAPTER 494.—An act relative to the employment of mechanics and laborers on public works.
- CHAPTER 496.—An act to abolish days of grace on commercial paper except sight drafts.
- CHAPTER 499.—An act relative to marriage and the legitimacy of children.
- CHAPTER 501.—An act to provide for the extension of the franchises of street railway companies.
- CHAPTER 502.—An act relative to the civil service of the commonwealth and the cities thereof.
- CHAPTER 509.—An act to divide the commonwealth into districts for the choice of senators and councillors, and to apportion representatives to the several counties.
- CHAPTER 517.—An act relative to the public service of the commonwealth and the cities and towns thereof, and the employment of veterans therein.
- CHAPTER 519.—An act in addition to an act to divide the commonwealth into districts for the choice of representatives in the congress of the United States.
- CHAPTER 522.—An act relative to office hours in the department of the treasurer and receiver general.
- CHAPTER 523.—An act relative to the payment of certain fees in the office of the secretary of the commonwealth.
- CHAPTER 526.—An act to increase the number of associate justices of the superior court.
- CHAPTER 540.—An act relative to injuries received on highways resulting from snow or ice.
- CHAPTER 544.—An act relative to the use of streets by corporations.
- CHAPTER 546.—An act relative to the licensing of engineers and firemen of stationary engines.

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- CHAPTER 62.—An act relative to oaths by the officers of mutual fire insurance companies.
- CHAPTER 63.—An act relative to bonds of insurance agents.
- CHAPTER 64.—An act relative to insurance agents.
- CHAPTER 65.—An act relative to returns of fires.
- CHAPTER 66.—An act relative to the definition of insurance.
- CHAPTER 67.—An act relative to the duties of examiner for the insurance department.
- CHAPTER 89.—An act relative to returns now required to be made by judges of probate and insolvency.
- CHAPTER 97.—An act to authorize certain charitable, educational and other corporations to hold additional real and personal estate.
- CHAPTER 99.—An act relative to calling meetings of street railway corporations.
- CHAPTER 109.—An act relative to the division of profits of savings banks and institutions for savings.
- CHAPTER 110.—An act relative to fishing in the Merrimac River.
- CHAPTER 113.—An act to provide that stenographic reports of committee hearings of the general court shall be deposited in the state library.
- CHAPTER 114.—An act concerning the annual appropriation for the state library.
- CHAPTER 116.—An act to authorize cities and towns to make by-laws and ordinances regulating the use of sewers.
- CHAPTER 117.—An act relative to concentrated commercial feed stuffs.
- CHAPTER 118.—An act relative to returns of fires.
- CHAPTER 119.—An act relative to preferred claims in cases of involuntary insolvency.
- CHAPTER 120.—An act relative to the management of insolvent estates.
- CHAPTER 124.—An act relative to proceedings against insolvent corporations.
- CHAPTER 126.—An act relative to payments by collectors of taxes in towns and to the inspection of their books.
- CHAPTER 128.—An act relative to the duties and liabilities of county treasurers and to the borrowing of money by counties.
- CHAPTER 129.—An act relative to the examination and certification of the accounts of county treasurers.
- CHAPTER 130.—An act imposing penalties for the violation of duties imposed by law upon county officers.
- CHAPTER 131.—An act relative to snits on bonds of executors, administrators, guardians and trustees.
- CHAPTER 132.—An act to authorize towns to appropriate money for the payment of the charges of insurance companies as sureties on bonds of town officials.
- CHAPTER 134.—An act relative to the board of library commissioners.
- CHAPTER 136.—An act to authorize the sale of estates subject to remainder or reversion.
- CHAPTER 137.—An act to further define the powers and duties of county commissioners.
- CHAPTER 138.—An act relative to the division of sewer assessments on real estate divided subsequent to the making of the assessment.
- CHAPTER 140.—An act for the protection of small game on Cape Ann.
- CHAPTER 141.—An act relative to printing certain public documents.
- CHAPTER 147.—An act relative to the appointment of appraisers in proceedings before probate courts.
- CHAPTER 148.—An act to lessen the burden of taxation upon certain disabled soldiers and sailors and the wives of such soldiers and sailors.
- CHAPTER 151.—An act relative to assessments, rents and charges for the construction and use of sewers.
- CHAPTER 153.—An act relative to estimates for county taxes and the expenditure of money by counties.
- CHAPTER 160.—An act to prohibit the sale of intoxicating liquors by holders of licenses of the first three classes on days succeeding certain holidays when said holidays fall on Sunday.

- CHAPTER 161. — An act relative to co-operative banks.
- CHAPTER 164. — An act relative to the burial of indigent soldiers and of their wives or widows.
- CHAPTER 165. — An act to restrict the use of tuberculin.
- CHAPTER 173. — An act relative to guardians of spendthrifts.
- CHAPTER 180. — An act relative to the jurisdiction of district, police and municipal courts.
- CHAPTER 183. — An act to provide for the appointment of a fourth assistant clerk of the municipal court of the city of Boston for civil business.
- CHAPTER 184. — An act for the better protection of wild fowl.
- CHAPTER 186. — An act to prohibit Massachusetts insurance companies from soliciting or transacting business in any state wherein they have not been authorized to transact business.
- CHAPTER 187. — An act relative to registration in dentistry.
- CHAPTER 188. — An act relative to the executive stenographer.
- CHAPTER 196. — An act relative to the registration of physicians and surgeons.
- CHAPTER 197. — An act relative to assessments by mutual fire insurance companies.
- CHAPTER 199. — An act authorizing special administrators, by leave of the probate court, to pay debts of the deceased.
- CHAPTER 204. — An act to establish a military museum.
- CHAPTER 206. — An act relative to the release of prisoners from the state prison on parole.
- CHAPTER 207. — An act to prevent the sale of intoxicating liquors in the public parks, pleasure grounds and reservations within the commonwealth.
- CHAPTER 208. — An act to provide for the stocking of the great ponds of the state with food fish.
- CHAPTER 213. — An act to authorize street railway companies to make certain contracts and leases.
- CHAPTER 220. — An act to authorize the appointment of an assistant clerk of courts for the county of Hampden.
- CHAPTER 224. — An act to provide for the removal of county commissioners from office in certain cases.
- CHAPTER 227. — An act to provide for refunding a portion of the amount paid for a liquor license in case of the death of the licensee before the expiration of the license.
- CHAPTER 228. — An act to permit adopted children and adopting parents to become legal beneficiaries of fraternal beneficiary organizations.
- CHAPTER 233. — An act regulating the payment by treasurers of cities and towns to the treasurer of the commonwealth of moneys received for liquor licenses.
- CHAPTER 236. — An act defining the powers of probation officers.
- SECTION 2 of CHAPTER 237. — An act relative to certain fees in municipal, district and police courts in bastardy cases, and to the service of bastardy warrants.
- CHAPTER 241. — An act relative to the personal liability of members of parishes.
- CHAPTER 243. — An act to limit the cost of illustrations in reports made to the governor or to the general court.
- CHAPTER 245. — An act relative to the furnishing of law books and blank books for district and police courts.
- CHAPTER 247. — An act relative to composition in insolvency with the creditors of Massachusetts corporations.
- CHAPTER 253. — An act relative to the compensation of janitors of armories.
- CHAPTER 254. — An act to provide for the better protection of trees and for the prevention of fires in woodlands.
- CHAPTER 256. — An act to authorize the employment of a messenger in the treasury department.
- CHAPTER 257. — An act to provide clerical assistance for the treasurer of the county of Plymouth.
- SECTION 2 of CHAPTER 260. — An act to establish the office of assistant clerk of the third district court of Eastern Middlesex.
- CHAPTER 262. — An act to authorize savings banks and institutions for savings to invest in the bonds of the Boston, Revere Beach and Lynn Railroad Company.
- CHAPTER 263. — An act to provide for clerical assistance in the third district court of Bristol.
- CHAPTER 264. — An act relative to the abolition of grade crossings of railroads and private ways.
- CHAPTER 266. — An act relative to the appointment of women as assistant probation officers in the municipal court of the city of Boston.
- CHAPTER 269. — An act to authorize the purchase of street railways and the consolidation of street railway companies in certain cases.
- CHAPTER 271. — An act to further regulate the transportation of spirituous and intoxicating liquors into no-license cities and towns.
- CHAPTER 272. — An act relative to the return to prison of prisoners who have violated the conditions of their release.
- CHAPTER 273. — An act relative to marking the carrying capacity of lighters or other vessels employed in transporting stone, gravel or sand.
- CHAPTER 274. — An act relative to the apportionment of sewer assessments.
- CHAPTER 287. — An act to provide for a commission to divide the county of Suffolk into representative districts.
- CHAPTER 288. — An act for the better protection of fish and game.
- CHAPTER 292. — An act to provide a lien for lodging-house keepers on the baggage and effects of lodgers.
- CHAPTER 294. — An act relative to sentences to the state prison.
- CHAPTER 299. — An act to authorize the taking of land for schoolhouses.
- SECTION 3 of CHAPTER 300. — An act relative to the use of buildings for stables.
- CHAPTER 303. — An act relative to unclaimed deposits and dividends in insolvency.
- CHAPTER 304. — An act relative to safe deposit, loan and trust companies.
- CHAPTER 305. — An act relative to the liability of innholders for losses sustained by guests.
- CHAPTER 306. — An act to provide for the appointment of an assistant district-attorney for the southern district.
- CHAPTER 315. — An act to permit street railway companies to allow street sprinkling apparatus to be used upon their tracks.
- CHAPTER 316. — An act relative to the approval of plans for county prisons.
- CHAPTER 317. — An act to provide for clerical assistance in the office of the register of probate and insolvency for the county of Suffolk.

- CHAPTER 318. — An act to establish the salary of the justice of the police court of Somerville.
- CHAPTER 321. — An act to authorize executors and administrators to provide for the perpetual care of burial lots.
- CHAPTER 322. — An act to establish the salary of the clerk of the district court of Southern Berkshire.
- CHAPTER 324. — An act to establish the salary of the justice of the police court of Gloucester.
- CHAPTER 325. — An act to establish the salary of the justice of the police court of Williamstown.
- CHAPTER 326. — An act relative to voluntary assignments for the benefit of creditors.
- CHAPTER 328. — An act relative to the registration by the civil service commissioners of applicants for labor.
- CHAPTER 329. — An act to establish the salary of the deputy superintendent of the reformatory prison for women.
- CHAPTER 334. — An act relative to the appointment of a seventh assistant clerk of the superior court, civil session, for the county of Suffolk.
- CHAPTER 337, except SECTION 3. — An act relative to the issue by railroad and street railway companies of coupon notes and other evidences of indebtedness.
- CHAPTER 342. — An act to establish the compensation of deputy sheriffs for attending sittings of the supreme judicial and superior courts.
- CHAPTER 344. — An act relative to the adulteration of food.
- CHAPTER 349. — An act relative to the enforcement of the laws relating to the inspection and sale of dairy products and imitations thereof.
- CHAPTER 350. — An act relative to the agents of the commissioners of prisons.
- CHAPTER 351. — An act relative to clerical service in the office of the secretary of the commonwealth.
- CHAPTER 355. — An act relative to state highways.
- CHAPTER 356. — An act to establish the salary of the justice of the municipal court of the Roxbury district of the city of Boston.
- CHAPTER 357. — An act relative to arbitration under the Massachusetts standard fire insurance policy.
- CHAPTER 358. — An act to establish the salary of the justice of the fourth district court of Eastern Middlesex.
- CHAPTER 359. — An act to establish the salary of the justice of the police court of Springfield.
- CHAPTER 360. — An act to establish the compensation of the special justices of the municipal court of the city of Boston.
- CHAPTER 362. — An act to establish the salary of the second clerk in the office of the board of commissioners of savings banks.
- CHAPTER 376. — An act to define and extend the duties of railroad inspectors.
- CHAPTER 379. — An act relative to the building line and height of buildings on parkways, boulevards and parks.
- CHAPTER 381. — An act providing for the speedy trial of certain civil cases.
- CHAPTER 382. — An act relative to executions with certificates of arrest attached.
- CHAPTER 383. — An act relative to the junior judge of probate and insolvency for the county of Middlesex.
- CHAPTER 385. — An act to increase the penalty for giving false alarms of fire.
- CHAPTER 386. — An act to simplify the proof of attested instruments.
- CHAPTER 389. — An act relative to the running of steamboats on the Lord's day.
- CHAPTER 390. — An act to establish the salary of the justice of the second district court of Eastern Middlesex.
- CHAPTER 391. — An act to authorize the change of one or more regiments of infantry to heavy artillery.
- CHAPTER 392. — An act to authorize the board of harbor and land commissioners to lease the commonwealth flats at South Boston.
- SECTION 1 of CHAPTER 397. — An act to provide clerical assistance for the clerk of the municipal court of the Dorchester district of the city of Boston.
- CHAPTER 398. — An act to authorize the granting of licenses to dealers in paints and dealers in chemicals, for the sale of pure alcohol for mechanical, manufacturing or chemical purposes.
- CHAPTER 400. — An act to provide that certain claims shall be preferred in settlements by receivers.
- CHAPTER 402. — An act relative to actions upon assigned claims.
- CHAPTER 404. — An act relative to attachments.
- CHAPTER 409. — An act defining the penalty for stealing bicycles.
- CHAPTER 412. — An act relative to prison labor.
- CHAPTER 416. — An act to authorize actions of tort against gas and electric light corporations for the loss of life by negligence.
- CHAPTER 418. — An act relative to the commitment and transfer of insane persons.
- CHAPTER 419. — An act relative to the watering of streets in cities.
- CHAPTER 422. — An act to establish the salary of the clerk of the first district court of Eastern Middlesex.
- CHAPTER 423. — An act relative to the liability of officers and stockholders in foreign corporations doing business in this commonwealth.
- CHAPTER 424. — An act relative to marriages.
- CHAPTER 427. — An act to protect creditors of insolvent debtors.
- CHAPTER 428. — An act relative to the powers and duties of town officers.
- CHAPTER 430. — An act to provide for the employment of two special agents in the bureau of statistics of labor, and to establish salaries therein.
- CHAPTER 431. — An act relative to practice in municipal, police and district courts.
- CHAPTER 434. — An act relative to the labor of prisoners in the jails and at the state farm.
- CHAPTER 437. — An act relative to the burial of human bodies.
- CHAPTER 438. — An act relative to the term of office of brigadier generals in the militia.
- CHAPTER 439. — An act relative to public records.
- CHAPTER 443. — An act relative to weights and measures.
- CHAPTER 444. — An act relative to the registry and return of births, marriages and deaths.
- CHAPTER 447. — An act relative to the settlement of estates of persons who have been absent and unheard from for more than fourteen years.
- CHAPTER 448. — An act concerning the volunteer militia.
- CHAPTER 452. — An act to require street railway companies to enclose the platforms of cars during certain months of the year.

- CHAPTER 454. — An act relative to the salary and expenses of the sheriff of the county of Bristol.
- CHAPTER 460. — An act to provide for the discharge of attachments in certain cases.
- CHAPTER 461. — An act to authorize the appointment of justices of the peace to issue warrants and take bail in certain cities.
- CHAPTER 462. — An act relative to the sale of property held for churches, cemeteries and other like trusts.
- CHAPTER 463. — An act relative to filing in the registry of deeds notice of the pendency of certain actions.
- CHAPTER 466. — An act relative to female poor debtors.
- CHAPTER 472. — An act relative to new trials in civil causes.
- CHAPTER 474. — An act relative to escapes and discharges from the Massachusetts hospital for dipsomanacs and inebriates.
- CHAPTER 478. — An act relative to stenographers in the supreme judicial court and in criminal cases.
- CHAPTER 480. — An act relative to the employment of prison labor in the industry of cane seating and in the manufacture of umbrellas.
- CHAPTER 487. — An act relative to the forfeiture of liquors seized under the provisions of chapter two hundred and seventy-one of the acts of the year eighteen hundred and ninety-seven and the penalties to be imposed thereunder.
- CHAPTER 490. — An act relative to the criminal business of the superior court.
- CHAPTER 491. — An act relative to the liability of employers to make compensation for personal injuries suffered by employees in their service.
- CHAPTER 492. — An act relative to certificates and returns of corporations.
- CHAPTER 496. — An act relative to the filing of incorporation papers by certain corporations, for record in the office of the secretary of the commonwealth.
- CHAPTER 498. — An act to enable certain small towns to take advantage of the act providing for the payment of a part of the compensation of school teachers from the state school fund.
- CHAPTER 505. — An act relative to law library associations.
- CHAPTER 508. — An act to establish a state board of bar examiners.
- CHAPTER 510. — An act relative to the pollution of sources of water supply.
- CHAPTER 515. — An act to provide for a uniform system of preparing jury lists and impanelling juries throughout the commonwealth.
- CHAPTER 517. — An act relative to the authorized standards of weights and measures.
- CHAPTER 522. — An act relative to suits to quiet the title to real estate.
- CHAPTER 524. — An act relative to the protection of certain birds.
- CHAPTER 525. — An act relative to actions for libel.
- RES. CHAPTER 95. — Resolve to provide for additional copies of the report of the Massachusetts highway commission, — so far as it prescribes the number of copies of the Massachusetts highway commission to be annually printed.

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- CHAPTER 45. — An act to authorize cities to appropriate money for the payment of the charges of insurance companies as sureties on bonds of city officers.
- CHAPTER 53. — An act to authorize the examiner in the insurance department to examine the accounts of receivers of insolvent insurance companies.
- CHAPTER 54. — An act relative to the duties of the insurance commissioner.
- CHAPTER 64. — An act relative to certificates and returns of corporations.
- CHAPTER 65. — An act relative to the distribution of trust estates.
- CHAPTER 67. — An act to authorize the commissioner of public records to expend money for the preservation of certain public records.
- CHAPTER 69. — An act relative to the probate of wills, the granting of letters testamentary, and the appointment of administrators in certain cases.
- CHAPTER 76. — An act relative to advertising hearings before legislative committees.
- CHAPTER 84. — An act relative to the placing of officers of the volunteer militia upon the retired list.
- CHAPTER 104. — An act to change the title of the executive clerk.
- CHAPTER 117. — An act to provide clerical assistance in the office of the register of probate and insolvency for the county of Worcester.
- CHAPTER 121. — An act to regulate the use of bicycles and similar vehicles.
- CHAPTER 124. — An act to more effectually prevent the unlawful use of ferrets for hunting purposes.
- CHAPTER 125. — An act relative to the use of public baths, wash houses, and open bathing places in towns, and to provide for instruction in the art of swimming.
- CHAPTER 131. — An act relative to the authority of judges of probate and insolvency.
- CHAPTER 134. — An act to require the description and plan of lands purchased or taken for public sewer, street and highway purposes, to be filed in the registry of deeds.
- CHAPTER 138. — An act relative to the appointment of testamentary guardians.
- CHAPTER 146. — An act to provide for the appointment of an officer of the probate court and court of insolvency for the county of Suffolk.
- CHAPTER 148. — An act relative to savings banks.
- CHAPTER 150. — An act relative to the manufacture and sale of clothing made in unhealthy places.
- CHAPTER 157. — An act relative to approving bonds in bastardy cases.
- CHAPTER 160. — An act to relieve the insurance commissioner from the obligation to approve the accounts of the state fire marshal.
- CHAPTER 162. — An act to provide that fire engines and apparatus shall have the right of way while passing through the streets of a city or town.
- CHAPTER 165. — An act relative to life-saving apparatus used by fire departments.

- CHAPTER 167.—An act relative to the inspection of steam boilers.
- CHAPTER 168.—An act relative to furnishing water in certain cases.
- CHAPTER 169.—An act to define the limits of Buzzard's Bay.
- CHAPTER 175.—An act relative to printing the report of the attorney-general.
- CHAPTER 181.—An act relative to the preservation of deer.
- CHAPTER 183.—An act to authorize the payment of five hundred dollars annually to the commander of the naval brigade on account of military property of the commonwealth in his charge.
- CHAPTER 184.—An act relative to the investments of savings banks and institutions for savings.
- CHAPTER 187.—An act to enlarge the powers of women appointed as special commissioners.
- SECTION 1 of CHAPTER 190.—An act to authorize towns to adopt by-laws relating to the removal of snow from sidewalks.
- CHAPTER 192.—An act relative to the sale of poisons.
- CHAPTER 193.—An act to prohibit the use of certain coloring matter in the manufacture of sausages.
- CHAPTER 196.—An act relative to the reimbursement of expenses incurred by certain towns in the maintenance of the insane.
- CHAPTER 199.—An act to determine the times and places of holding probate courts for the county of Bristol.
- CHAPTER 200.—An act to provide for allowing costs to parties recovering damages in grade crossing cases.
- CHAPTER 201.—An act to determine the times and places of holding probate courts for the county of Norfolk.
- CHAPTER 204.—An act relative to inquests and fees in district, police and municipal courts.
- CHAPTER 205.—An act relative to fines and forfeitures under the laws for the protection of fish and game.
- CHAPTER 208.—An act to provide for the appointment of constables in cities.
- CHAPTER 213.—An act relative to the admission of sane voluntary patients to the Massachusetts hospital for epileptics.
- CHAPTER 216.—An act to establish the salary of the justice of the district court of Northern Berkshire.
- CHAPTER 219.—An act to provide for an additional clerk in the office of the chief of the district police.
- CHAPTER 230.—An act relative to the relief of destitute shipwrecked seamen.
- CHAPTER 234.—An act to provide for the appointment of an assistant register of probate and insolvency for the county of Hampden.
- CHAPTER 235.—An act to equalize the salaries of the assistant district-attorneys for the Suffolk district.
- CHAPTER 238.—An act relative to clerical assistance for clerks of courts.
- CHAPTER 240.—An act relative to sentences to the state prison.
- CHAPTER 247.—An act relative to co-operative banks.
- CHAPTER 254.—An act to provide for the appointment of one additional court officer for attendance upon the several sessions of the municipal court of the city of Boston for civil business.
- CHAPTER 256.—An act relative to the travelling expenses of the justice and clerk of the first district court of Northern Worcester.
- CHAPTER 259.—An act relative to the payment of the expenses of maintaining prison industries.
- CHAPTER 261.—An act to provide for the appointment of additional members of the boiler inspection department of the district police.
- CHAPTER 264.—An act relative to returns of qualification of officers by county commissioners.
- CHAPTER 265.—An act relative to the organization of state boards and commissions.
- CHAPTER 266.—An act relative to the liability of officers of corporations for corporate debts.
- CHAPTER 267.—An act to authorize cities to pension firemen.
- CHAPTER 277.—An act relative to the labor of prisoners in jails and houses of correction.
- CHAPTER 280.—An act to establish the salary of the judge of probate and insolvency for the county of Berkshire.
- CHAPTER 286.—An act to provide for clerical assistance in the police court of Lawrence.
- SECTION 2 of CHAPTER 287.—An act to establish a district court for the county of Dukes County.
- CHAPTER 294.—An act to establish the salary of the treasurer of the county of Middlesex.
- CHAPTER 299.—An act to provide for an examination and renewal of the monuments marking the boundary lines of the commonwealth.
- CHAPTER 307.—An act relative to the employment of prisoners of the Massachusetts reformatory upon lands and buildings owned by the commonwealth.
- CHAPTER 312.—An act to provide for the payment of the expenses of the state board of bar examiners.
- CHAPTER 315.—An act relative to the temporary release of children from truant schools.
- CHAPTER 316.—An act relative to the compensation of special commissioners in counties.
- CHAPTER 317.—An act to exempt the county of Nantucket from the operation of certain statutes relative to counties and county officers.
- CHAPTER 318.—An act to provide for the appointment of associate medical examiners.
- CHAPTER 320.—An act relative to the printing of certain public documents.
- CHAPTER 322.—An act to establish the salary of the treasurer of the county of Bristol.
- CHAPTER 323.—An act to establish the salary of the treasurer of the county of Hampden.
- CHAPTER 324.—An act to establish the salary of the sheriff of the county of Middlesex.
- CHAPTER 326, except SECTIONS 8 and 9.—An act to regulate the infliction of the death penalty.
- CHAPTER 328.—An act to authorize street railway companies to use their cars and tracks for the transportation of snow, ice, stones, gravel, dirt, street sweepings and grading materials.
- CHAPTER 330.—An act to establish the salary of the treasurer of the county of Norfolk.
- CHAPTER 331.—An act to provide clerical assistance for the clerk of the police court of Lynn.
- CHAPTER 332.—An act to provide clerical assistance for the register of probate and insolvency for the county of Middlesex.
- CHAPTER 333.—An act to establish the salary of the assistant register of deeds for the Middlesex southern district.
- CHAPTER 334.—An act to provide for the employment of prisoners in making goods for the use of the prisons and other public institutions.

- CHAPTER 336. — An act to require corporations created by special charter to file evidence of their organization in the office of the secretary of the commonwealth.
- CHAPTER 339. — An act relative to the protection of certain birds.
- CHAPTER 348. — An act relative to the militia.
- CHAPTER 351. — An act to authorize cities and towns to construct bicycle paths.
- CHAPTER 353. — An act to extend the provisions of the Public Statutes relating to the taxable valuation of vessels engaged in the foreign carrying trade.
- CHAPTER 354. — An act relative to the funeral expenses of paupers.
- CHAPTER 355. — An act to change the time of the sittings of the superior court for the county of Franklin.
- CHAPTER 356. — An act to provide for the reference of disputed claims for soldiers' relief to the commissioners of state aid.
- CHAPTER 358. — An act to establish the salary of the justice of the third district court of Eastern Middlesex.
- CHAPTER 359. — An act relative to the staff of the commander-in-chief.
- CHAPTER 361. — An act to require cities and towns to pay interest on arrears of sums due to the commonwealth on account of liquor licenses.
- CHAPTER 362. — An act to establish the salary of the justice of the police court of Newton.
- CHAPTER 365. — An act relative to employing prisoners in preparing road material by hand labor.
- CHAPTER 366. — An act relative to the annual reports of state boards and commissions charged with the expenditure of money.
- CHAPTER 367. — An act to authorize the granting of half holidays to public employees.
- CHAPTER 369. — An act to establish the office of clerk of the first district court of Southern Worcester, — so far as it relates to salary.
- CHAPTER 370. — An act relative to the exemption of the property of widows of soldiers or sailors from taxation.
- CHAPTER 371. — An act relative to sentences to the state prison.
- CHAPTER 372. — An act to establish the salary of the justice of the police court of Springfield.
- CHAPTER 374. — An act relative to the giving of testimony by witnesses before special tribunals.
- CHAPTER 376. — An act to establish the salary of the assistant clerk of courts for the county of Bristol.
- CHAPTER 380. — An act relative to insurance against loss by bombardment.
- CHAPTER 381. — An act relative to the appointment of a justice of the peace in the city of Quincy, with authority to issue in criminal cases warrants returnable to the district court of East Norfolk, and to take bail in such cases.
- CHAPTER 382. — An act to establish the salary of the clerk of the second district court of Eastern Worcester.
- CHAPTER 384. — An act relative to the admission of attorneys-at-law.
- CHAPTER 388. — An act to establish the salary of the justice of the second district court of Eastern Worcester.
- CHAPTER 391. — An act relative to the support of state poor by cities and towns.
- CHAPTER 393. — An act relative to reclaiming and improving waste and unused land with the labor of prisoners from jails and houses of correction.
- CHAPTER 394. — An act relative to the protection of children.
- CHAPTER 396. — An act relative to the support of the poor in towns.
- CHAPTER 397. — An act relative to arrest on mesne process.
- CHAPTER 404. — An act to authorize street railway companies to acquire land for the avoidance of grade crossings with railroads.
- CHAPTER 407. — An act to authorize the formation of additional companies of the naval militia.
- CHAPTER 411. — An act to secure uniformity in taking bail in criminal cases.
- CHAPTER 414. — An act relative to special administrators.
- CHAPTER 416. — An act relative to married women doing business on their separate account.
- CHAPTER 417. — An act relative to the taxation of street railway companies.
- CHAPTER 420. — An act relative to attachments.
- CHAPTER 425. — An act relative to the pauper laws of the commonwealth.
- CHAPTER 428. — An act to provide for the restoration to their former positions in the militia of officers and men entering the military or naval service of the United States, and for the raising and organizing of provisional companies, battalions and regiments.
- CHAPTER 429. — An act to establish the salary of the justice of the third district court of Bristol.
- CHAPTER 432. — An act to provide for the summary investigation of county and municipal expenditures.
- CHAPTER 433. — An act to establish a state board of insanity.
- CHAPTER 436. — An act relative to the report of the attorney-general.
- CHAPTER 437. — An act to authorize cemetery corporations to incinerate bodies of the dead.
- CHAPTER 438. — An act relative to the commitment of the insane.
- CHAPTER 443. — An act relative to sentences to the state farm.
- CHAPTER 444. — An act relative to the punishment of offences against chastity and morality.
- CHAPTER 453. — An act to provide for the custody of certain records.
- CHAPTER 454. — An act to allow the restoration to the public service of persons leaving it for military service in time of war.
- CHAPTER 457. — An act relative to suits to quiet the title to real estate.
- CHAPTER 458. — An act relative to administrators, executors and trustees.
- CHAPTER 459. — An act to establish the salary of the first clerk of the secretary of the state board of agriculture.
- CHAPTER 460. — An act to establish the salaries of the justice and clerk of the fourth district court of Berkshire.
- CHAPTER 465. — An act relative to the granting of discharges to insolvent debtors.
- CHAPTER 466. — An act relative to the employment of superintendents of schools by small towns.
- CHAPTER 474. — An act relative to fraternal beneficiary organizations.
- CHAPTER 476. — An act relative to state highways.
- CHAPTER 477. — An act to authorize the appointment of a third deputy by the controller of county accounts.
- CHAPTER 479. — An act relative to the promotion of anatomical science.

CHAPTER 480. — An act to authorize the erection and maintenance of dams across streams not navigable, for making and maintaining ice ponds.

CHAPTER 481. — An act to extend the operation of the law relative to the weekly payment of wages.

CHAPTER 483. — An act to define the powers of a special district police officer.

CHAPTER 485. — An act relative to limited partnerships.

CHAPTER 486. — An act relative to the licensing of private detectives.

CHAPTER 487. — An act relative to libels for divorce.

CHAPTER 488. — An act relative to practice in municipal, police and district courts.

CHAPTER 489. — An act relative to the issuing of executions in suits founded on a judgment previously rendered.

CHAPTER 490. — An act relative to the abuse of corporate powers.

CHAPTER 494. — An act to regulate the employment of labor.

CHAPTER 496. — An act relative to school attendance and truancy.

SECTION 3 OF CHAPTER 497. — An act to establish the district court of Western Norfolk, — so far as it relates to salaries.

CHAPTER 498. — An act to authorize the construction of booms across the Connecticut river.

CHAPTER 499. — An act to establish the salaries of the board of gas and electric light commissioners.

CHAPTER 500. — An act relative to the disfigurement of objects by the posting of advertisements or otherwise.

CHAPTER 502. — An act to authorize certain corporations to surrender their certificates of incorporation.

CHAPTER 503. — An act to require approval by the commissioner of corporations of certificates of change of par value of shares and of addition to or change of business by certain corporations.

CHAPTER 504. — An act to authorize certain corporations to add to or change their purpose of incorporation.

CHAPTER 505. — An act to prohibit deductions in the wages of women and minors employed in manufacturing and mechanical establishments.

CHAPTER 507. — An act to provide for uniformity in the assessment of taxes.

CHAPTER 511. — An act to provide for the appointment of probation officers in the superior court.

CHAPTER 514. — An act relative to entries for breach of conditions in deeds.

CHAPTER 515. — An act to authorize the district police to examine pawnbrokers' books.

CHAPTER 518. — An act to establish the salary of the assistant clerk of courts for the county of Norfolk.

CHAPTER 519. — An act relative to the seal and coat-of-arms of the commonwealth.

CHAPTER 521. — An act to provide for additional assistance in the office of the auditor of the commonwealth.

CHAPTER 526. — An act to authorize cities and towns to make certain temporary loans.

CHAPTER 527. — An act to provide for the appointment of conservators of the property of aged persons who are unable to care therefor.

CHAPTER 528. — An act relative to state highways.

CHAPTER 533. — An act relative to negotiable instruments.

CHAPTER 535. — An act relative to declarations of deceased persons.

CHAPTER 537. — An act relative to reinsurance contracts.

CHAPTER 538. — An act relative to the abolition of grade crossings.

SECTION 3 OF CHAPTER 544. — An act to require the state board of agriculture to take charge of the work of exterminating the brown tail moth.

CHAPTER 545. — An act relative to contracts for the conditional sale of personal property.

CHAPTER 548. — An act to revise and codify the laws relative to elections.

CHAPTER 549. — An act to provide an equitable process after judgment in certain cases.

CHAPTER 554. — An act relative to nominations for aldermen in the city of Boston.

CHAPTER 555. — An act to provide that the expenses of trial justices for office rent shall be paid by the county.

CHAPTER 559. — An act relative to poor debtor proceedings.

CHAPTER 562. — An act to provide for registering and confirming titles to land.

CHAPTER 565. — An act relative to the liability of persons and corporations for negligence resulting in the death of persons not in their employ.

CHAPTER 567. — An act to limit the connection between savings banks and other banks and national banking associations.

CHAPTER 571. — An act to prevent over-insurance.

CHAPTER 572. — An act to establish the salaries of the harbor and land commissioners.

CHAPTER 574. — An act relative to special commissioners.

CHAPTER 576. — An act relative to trading stamps, coupons and other devices.

CHAPTER 577. — An act relative to small loans and the redemption of the security therefor.

CHAPTER 578, except SECTION 28. — An act relative to street railways.

CHAPTER 580. — An act to amend chapter four hundred and ninety-six of the acts of the year eighteen hundred and ninety-eight relative to school attendance and truancy.

RES. CHAPTER 66. — Resolve in favor of the Massachusetts school for the feeble-minded.

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CHAPTER 54. — An act relative to the amount of money to be advanced to the disbursing officer of the state board of insanity.

CHAPTER 81. — An act relative to insolvent estates of deceased persons.

CHAPTER 85. — An act relative to the securing of materials by cities and towns for the construction, repair or improvement of streets or ways.

CHAPTER 90. — An act to provide for the deposit of money in a savings bank in the name of a judge of probate, and for the payment of such deposit.

CHAPTER 91. — An act relative to the price of certain writs.

CHAPTER 100. — An act relative to the clerks and the assistant clerks of the senate and the house of representatives.

- CHAPTER 103.—An act to provide for the enforcement of orders made by the commissioners on inland fisheries and game relative to fishways.
- CHAPTER 107.—An act to provide for the cultivation of food fish.
- CHAPTER 108.—An act relative to deposits by county treasurers.
- CHAPTER 110.—An act relative to the travelling expenses of the special justice of the first district court of Bristol.
- CHAPTER 111.—An act to provide school registers and other school blanks for the towns and cities of the commonwealth.
- CHAPTER 115.—An act relative to expenditures for the clerical and contingent expenses of the bureau of statistics of labor.
- CHAPTER 116.—An act to make the Lord's day close season for birds and game.
- CHAPTER 120.—An act relative to summary process for the recovery of land.
- CHAPTER 123.—An act relative to the taking of depositions.
- CHAPTER 125.—An act to limit the amount payable under the land registration act from the assurance fund.
- CHAPTER 129.—An act relative to the election of city officers by city councils.
- CHAPTER 130.—An act relative to days of grace on sight drafts.
- CHAPTER 131.—An act relative to registering and confirming titles to land.
- CHAPTER 139.—An act relative to the inspection of buildings.
- CHAPTER 140.—An act to establish a sitting of the superior court for the county of Bristol in the city of Fall River.
- CHAPTER 143.—An act to provide for the better enforcement of the laws relative to the public health.
- CHAPTER 146.—An act relative to nomination papers and conventions.
- CHAPTER 147.—An act relative to sales of real estate by guardians.
- CHAPTER 148.—An act relative to the preparation of voting lists.
- CHAPTER 151.—An act to authorize the employment of a messenger in the department of the auditor of the commonwealth.
- CHAPTER 153.—An act to authorize the treasurer of the county of Bristol to employ additional clerical assistance.
- CHAPTER 154.—An act to establish the salary of the clerk of the first district court of Southern Worcester.
- CHAPTER 156.—An act to relieve certain towns from the support of inmates of certain state institutions.
- CHAPTER 158.—An act to authorize transfers from the Lyman school for boys and from the state industrial school for girls to the hospital cottages for children or the Massachusetts school for the feeble-minded.
- CHAPTER 164.—An act to authorize the change of names of insurance corporations.
- CHAPTER 166.—An act relative to search warrants authorizing search in the night time.
- CHAPTER 169.—An act relative to the inspection of milk.
- CHAPTER 170.—An act relative to the election of city officers by city councils or by other municipal bodies or boards.
- CHAPTER 171.—An act to authorize towns to print and publish their town records.
- CHAPTER 178.—An act relative to special commissioners.
- CHAPTER 184.—An act relative to the public health in towns.
- CHAPTER 190.—An act relative to the counting of ballots at caucuses.
- CHAPTER 191.—An act to provide for the appointment of an assistant register of probate and insolvency for the county of Hampshire.
- CHAPTER 192.—An act relative to the care of the state library.
- CHAPTER 193.—An act relative to juvenile offenders in need of hospital treatment.
- CHAPTER 196.—An act to provide for the better protection of county buildings, and for the appointment of county police by county commissioners.
- CHAPTER 197.—An act relative to marriages of minors.
- CHAPTER 198.—An act relative to the conveyance of insane women to insane hospitals and asylums.
- CHAPTER 199.—An act relative to mechanical and manufacturing corporations.
- CHAPTER 201.—An act relative to the temporary release of children under sentence for truancy.
- CHAPTER 203.—An act to provide for the extension of the Bertillon method of identifying criminals.
- SECTION 2 OF CHAPTER 204.—An act to provide an assistant clerk for the police court of Springfield and to establish his salary, — so far as it relates to salary.
- CHAPTER 207.—An act relative to territorial jurisdiction in certain inquest proceedings.
- CHAPTER 209.—An act relative to the counting of ballots at elections.
- CHAPTER 211.—An act relative to the admission of patients to the Massachusetts hospital for epileptics.
- CHAPTER 215.—An act to authorize savings banks and institutions for savings to loan upon the bonds of the Boston Terminal Company.
- CHAPTER 217.—An act to establish the salary of the clerk of the district court of Northern Berkshire.
- CHAPTER 218.—An act relative to fees for serving precepts for elections and subpoenas.
- CHAPTER 220.—An act relative to the order in which political designations shall be placed upon the official ballot in elections.
- CHAPTER 223.—An act relative to the standard quality of milk.
- CHAPTER 226.—An act to regulate the discharge of convicts committed to prison or other place of confinement for non-payment of fine, or fine and costs.
- CHAPTER 229.—An act relative to domestic and foreign mutual assessment life insurance corporations.
- CHAPTER 234.—An act to establish the salary of the assistant clerk of the police court of Lowell.
- CHAPTER 235.—An act relative to the licensing of auctioneers.
- CHAPTER 238.—An act relative to collection agencies.
- CHAPTER 242.—An act giving the superior court jurisdiction for preventing unlawful blasting.
- CHAPTER 243.—An act to authorize the appointment of special officers for the removal and transfer of prisoners.
- CHAPTER 245.—An act relative to the appointment of assistant watchmen at the state prison.

- CHAPTER 246.—An act to authorize the establishment of vacation schools.
- CHAPTER 247.—An act to extend the application of the law relative to the weekly payment of wages.
- CHAPTER 252.—An act relative to the injury or destruction of street railway signals.
- CHAPTER 253.—An act relative to the appointment of park commissioners.
- CHAPTER 254.—An act to prevent the improper use of the flag of the United States or of the commonwealth of Massachusetts.
- CHAPTER 256.—An act to provide for the establishment of city and town seals.
- CHAPTER 259.—An act to provide that reports shall be made to the state board of charity by certain charitable corporations.
- CHAPTER 260.—An act relative to the sale of ice.
- CHAPTER 261.—An act to exempt certain loan companies from procuring local licenses.
- CHAPTER 262.—An act to authorize clerks of police, municipal and district courts to approve bastardy bonds.
- CHAPTER 263.—An act relative to the removal of prisoners to the state farm.
- CHAPTER 264.—An act to establish the salary of the assistant register of probate and insolvency for the county of Worcester.
- CHAPTER 266.—An act relative to commitments to the Massachusetts hospital for dipsomaniacs and inebriates.
- CHAPTER 269.—An act relative to the investments of savings banks and institutions for savings.
- CHAPTER 271.—An act to change the time of the April sitting of the superior court for the county of Barnstable.
- CHAPTER 276.—An act to provide for the better protection of infants.
- CHAPTER 278.—An act relative to bonds in probate courts signed by surety companies.
- CHAPTER 284.—An act relative to the release by the guardian of an insane married man of estates of tenancy by curtesy and rights by statute.
- CHAPTER 286.—An act relative to the examination of street railway bridges.
- CHAPTER 297.—An act to establish the salary of the clerk of the third district court of Eastern Middlesex.
- CHAPTER 299.—An act relative to the establishment of textile schools.
- CHAPTER 301.—An act relative to special administrators.
- SECTION 1 of CHAPTER 302.—An act relative to the placing of officers upon the retired list.
- CHAPTER 309.—An act relative to the annual report of the commissioners of prisons.
- CHAPTER 310.—An act to provide for the retirement of justices of the supreme judicial court and of the superior court.
- CHAPTER 311.—An act relative to the allowance to be paid in certain cases to the widow and children of a deceased person.
- CHAPTER 313.—An act to provide for two additional associate justices of the municipal court of the city of Boston.
- CHAPTER 314.—An act to establish the salary of the justice of the district court of Central Berkshire.
- CHAPTER 315.—An act to establish the salaries of the justice and clerk of the police court of Fitchburg.
- CHAPTER 316.—An act to define the crime of larceny.
- CHAPTER 319.—An act relative to making connections of estates with sewers.
- CHAPTER 320.—An act relative to the regulation of electric wires.
- CHAPTER 323.—An act to provide that a person applying to vote in the city of Boston shall not be required to write his name on the voting list.
- CHAPTER 325.—An act relative to discharges from the Massachusetts hospital for dipsomaniacs and inebriates.
- CHAPTER 326.—An act relative to unauthorized structures in a city or town.
- CHAPTER 329.—An act relative to caucuses and elections.
- CHAPTER 330.—An act to codify and amend the laws relative to the preservation of trees.
- CHAPTER 333.—An act relative to entry fees and other charges in bastardy cases.
- CHAPTER 336.—An act relative to the printing and distribution of the blue book.
- CHAPTER 337.—An act relative to the regulation and supervision of wires over streets and buildings in towns.
- CHAPTER 339.—An act to establish the salary of the justice of the police court of Brockton.
- CHAPTER 340.—An act relative to renovated butter, so-called.
- CHAPTER 344.—An act to make eight hours a day's work for city and town employees.
- CHAPTER 345.—An act relative to the duties of judges of probate and insolvency.
- CHAPTER 346.—An act relative to political committees and caucuses of political parties.
- CHAPTER 348.—An act to authorize trust companies to act as executors and in other fiduciary capacities.
- CHAPTER 350.—An act relative to clerical assistance for clerks of courts.
- CHAPTER 352.—An act relative to public warehousemen and other depositaries.
- CHAPTER 353.—An act to authorize additional clerical assistance for the clerk of the municipal court of the city of Boston for civil business.
- CHAPTER 354.—An act relative to inks for public records and to making such records by means of typewriting machines.
- CHAPTER 357.—An act relative to appeals in actions at law upon demurrers and agreed facts.
- CHAPTER 358.—An act to provide for the protection of historical monuments.
- CHAPTER 359.—An act relative to the registration and protection of labels, trade-marks, stamps and forms of advertisements.
- CHAPTER 360.—An act relative to fines and forfeitures under the laws protecting fish and game.
- CHAPTER 361.—An act relative to the duties of assessors in the city of Boston.
- CHAPTER 364.—An act relative to the authority of foreign surety companies to become surety on bonds to the commonwealth.
- CHAPTER 368, except SECTION 12.—An act relative to the licensing of engineers and firemen.
- CHAPTER 372.—An act relative to military aid.
- CHAPTER 373.—An act relative to notices of petitions to the supreme judicial court for the construction of wills.
- CHAPTER 374.—An act relative to state aid.
- CHAPTER 376.—An act to provide for the better enforcement of the laws relative to the civil service.
- CHAPTER 377.—An act to provide for an additional assistant clerk of the superior court for civil business for the county of Suffolk.

- CHAPTER 379. — An act relative to the taking of land by cities and towns.
- CHAPTER 381. — An act relative to examining boards for officers of the volunteer militia.
- CHAPTER 383. — An act relative to the travelling expenses of jurors.
- CHAPTER 387. — An act relative to the solemnization of marriages.
- CHAPTER 389. — An act relative to delaying service of warrants in criminal cases.
- SECTION 2 of CHAPTER 391. — An act to establish the district court of Eastern Franklin, — so far as it relates to salaries.
- CHAPTER 394. — An act to provide for part payment of taxes and of certain claims against cities and towns.
- CHAPTER 408. — An act relative to infectious diseases among domestic animals, and to establish a new board of cattle commissioners.
- CHAPTER 409. — An act to provide for the simplification of criminal pleadings.
- CHAPTER 412. — An act to authorize sheriffs and constables to store property removed by them from premises in the service of execution.
- CHAPTER 413. — An act relative to the employment of minors.
- CHAPTER 417. — An act to provide for the payment of an allowance to families of certain persons not firemen, but who are killed or fatally injured while doing fire duty.
- CHAPTER 422. — An act relative to the practice of pharmacy.
- CHAPTER 423. — An act to authorize the appointment of a permanent court officer for the probate court of the county of Middlesex.
- CHAPTER 425. — An act relative to the service of process in the collection of taxes.
- CHAPTER 436. — An act relative to the protection of shade trees.
- CHAPTER 442. — An act relative to fraternal beneficiary corporations.
- CHAPTER 444. — An act relative to suits to quiet the title to real estate.
- CHAPTER 445. — An act relative to equitable process after judgment in certain cases.
- CHAPTER 453. — An act relative to the use of streets by corporations.
- CHAPTER 458. — An act relative to the compensation of commissioners appointed to assess damages in certain cases.
- CHAPTER 459. — An act relative to the payment of certain expenses of state officials from the treasury of the commonwealth.
- CHAPTER 462. — An act relative to the number of places which may be licensed for the sale of intoxicating liquors.
- CHAPTER 465. — An act relative to the inspection of gas and gas meters.
- CHAPTER 467. — An act relative to the business of trust companies.
- CHAPTER 468. — An act to exempt certain trades unions from the laws relative to fraternal beneficiary organizations.
- CHAPTER 470. — An act to establish the salary of the district-attorney for the south-eastern district.
- CHAPTER 472. — An act relative to statements required to be made to the insurance commissioner by insurance corporations doing business on the assessment plan.
- CHAPTER 474. — An act to provide a penalty for trespassing upon bicycle paths.

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- CHAPTER 64. — An act to provide for the protection of Mongolian, English and golden pheasants.
- CHAPTER 92. — An act to authorize burglary and theft insurance companies to do business in this commonwealth.
- CHAPTER 102. — An act relative to the burial of the dependent mothers of indigent soldiers, sailors and marines.
- CHAPTER 106. — An act relative to the practice of pharmacy.
- CHAPTER 112. — An act relative to making connections of estates with sewers.
- CHAPTER 116. — An act relative to the recorder and assistant recorders of the court of registration.
- CHAPTER 117. — An act to provide for the disposal of checks given by the treasurer and receiver general in certain cases.
- CHAPTER 119. — An act relative to the repair of county buildings by day work.
- CHAPTER 120. — An act relative to caucuses held preparatory to national party conventions.
- CHAPTER 127. — An act to provide for the appointment of trustees for preparative meetings of the society of Friends or Quakers.
- CHAPTER 128. — An act relative to the destruction of hawks in the county of Dukes County.
- CHAPTER 129. — An act relative to the maintenance of bastard children.
- CHAPTER 137. — An act to establish the salary of the third deputy in the office of the controller of county accounts.
- CHAPTER 138. — An act to establish the office of clerk of the police court of Lee.
- CHAPTER 144. — An act to provide for the appointment of an assistant register of probate and insolvency for the county of Bristol.
- CHAPTER 147. — An act relative to executors and administrators.
- CHAPTER 154. — An act relative to the payment by railroad companies of rebates on cash fares.
- CHAPTER 157. — An act to authorize towns to regulate by by-law the sale of certain articles by hawkers and pedlers.
- CHAPTER 159. — An act to regulate the taking of herring and mackerel in Mill River and Plum Island River and their tributaries.
- CHAPTER 162. — An act relative to parading with imitation firearms.
- CHAPTER 166. — An act to authorize cities and towns to provide free evening lectures.
- CHAPTER 168. — An act relative to the rate of interest on overdue taxes.
- CHAPTER 174. — An act to extend the time at which the act to revise the laws relative to the distribution of the estates of deceased persons shall take effect.

- CHAPTER 175.—An act relative to the annual certificate which school committees are required to return to the state board of education.
- CHAPTER 177.—An act to give the superior court equity powers in cases of taking or sale of real estate for the payment of taxes.
- CHAPTER 179.—An act relative to the appointment of constables of police, district and municipal courts.
- CHAPTER 180.—An act relative to the printing and sale of probate indexes.
- CHAPTER 183.—An act to authorize the making of insurance upon the health of individuals.
- CHAPTER 185.—An act to permit fraternal beneficiary corporations organized under the laws of the Dominion of Canada or any province thereof to transact business in this commonwealth.
- CHAPTER 187.—An act to provide school registers and other school blanks for the towns and cities of the commonwealth.
- CHAPTER 188.—An act to increase the efficiency of the militia.
- CHAPTER 189.—An act relative to the furnishing of soldiers' relief by cities and towns.
- CHAPTER 191.—An act relative to the trustee process.
- CHAPTER 192.—An act to change the name of the Massachusetts hospital for consumptives and tubercular patients.
- CHAPTER 197.—An act relative to the transportation of scholars of the public schools by street railway companies.
- CHAPTER 198.—An act to change the name of the county office of special commissioner to that of associate commissioner.
- CHAPTER 201.—An act relative to the licensing of engineers and firemen.
- CHAPTER 209.—An act to regulate the shooting of black duck, geese, brant and other aquatic birds in Plymouth harbor or bay.
- CHAPTER 213.—An act to authorize and regulate the appointment of additional constables in towns.
- CHAPTER 214.—An act relative to the purchase and sale of real estate by co-operative banks.
- CHAPTER 215.—An act to provide for the inspection of city and town almshouses by the state board of charity.
- CHAPTER 217.—An act to establish the salaries of the first and second clerks in the office of the auditor of accounts.
- CHAPTER 218.—An act relative to the length of the school year in certain towns.
- CHAPTER 219.—An act relative to summer schools for teachers.
- CHAPTER 220.—An act to authorize cities to indemnify police officers and members of the departments for damages sustained or expenses incurred in certain cases.
- CHAPTER 223.—An act to require railroad companies to equip their cars with platform gates.
- CHAPTER 225.—An act relative to printing certain public documents.
- CHAPTER 229.—An act to establish the salary of the justice of the police court of Williamstown.
- CHAPTER 230.—An act relative to the taking of lobsters.
- CHAPTER 231.—An act relative to political designations of candidates for state, city and town offices.
- CHAPTER 232.—An act relative to the issuance of letters of guardianship to non-resident guardians of non-resident wards.
- CHAPTER 233.—An act to authorize the board of free public library commissioners to purchase books for the free public libraries of certain towns.
- CHAPTER 239.—An act to provide for an appeal from orders of inspectors of factories and public buildings.
- CHAPTER 241.—An act to require the commissioners of prisons of Massachusetts and certain other officials to transmit to the election commissioners of the city of Boston the names of residents of said city confined in certain penal and charitable institutions.
- CHAPTER 245.—An act relative to nomination papers.
- CHAPTER 246.—An act to authorize cities to pension firemen.
- CHAPTER 248.—An act relative to the employment of superintendents of schools by cities and towns.
- CHAPTER 249.—An act relative to the places in which the business of co-operative banks shall be conducted.
- CHAPTER 253.—An act relative to injuries received on state highways.
- CHAPTER 254.—An act for the better protection of children.
- CHAPTER 256.—An act relative to mechanics' liens for the removal of buildings or other structures.
- CHAPTER 257.—An act relative to the reserve of trust companies.
- CHAPTER 260.—An act to provide for the identification of female criminals.
- CHAPTER 261.—An act relative to the service of process upon the commissioner of corporations.
- CHAPTER 265.—An act to establish the salary of the justice of the police court of Lynn.
- CHAPTER 266.—An act to authorize the treasurer of the commonwealth to make advances of money to bonded paymasters of the militia.
- CHAPTER 267.—An act relative to the attendance of witnesses before boards of registrars of voters.
- CHAPTER 268.—An act to establish the salary of the justice of the police court of Lawrence.
- CHAPTER 269.—An act relative to the employment of prisoners in making goods for public use.
- CHAPTER 273.—An act relative to the distribution of profits by co-operative banks.
- CHAPTER 279.—An act to provide for the reimbursement of probation officers for expenses incurred by them in the performance of their duties.
- CHAPTER 280.—An act relative to foreign corporations having a usual place of business in this commonwealth.
- CHAPTER 281.—An act relative to the office hours of clerks of police, district and municipal courts.
- CHAPTER 282.—An act to prohibit corporations from requiring bonds of their employees in certain cases.
- CHAPTER 284.—An act to regulate fishing in brooks stocked by the commissioners on inland fisheries and game.
- CHAPTER 286.—An act to authorize the appointment of an electrician and an assistant engineer at the state prison.
- CHAPTER 290.—An act relative to the service of process in the collection of taxes.
- CHAPTER 294.—An act relative to registration in dentistry.
- CHAPTER 295.—An act to establish the salary of the sheriff of the county of Norfolk.

- CHAPTER 297.—An act to provide for obtaining a portrait of the present governor of the commonwealth, portraits of two of the colonial governors, and portraits of future governors,—except section 2 and so much of section 1 as is temporary.
- CHAPTER 298.—An act relative to passenger fares on certain morning and evening trains on railroads entering the city of Boston.
- CHAPTER 299.—An act relative to the jurisdiction of the superior court to assess damages for the taking of property by right of eminent domain.
- CHAPTER 300.—An act relative to the adulteration of milk.
- CHAPTER 307.—An act relative to corrupt practices in elections.
- CHAPTER 311.—An act to authorize the reporting of matters for determination by the supreme judicial court in certain cases.
- CHAPTER 312.—An act relative to the display of lights upon bicycles.
- CHAPTER 317.—An act to regulate the practice of pharmacy.
- CHAPTER 318.—An act to require railroad companies to transport the bicycles of passengers as baggage.
- CHAPTER 319.—An act to provide rooms in the city of Boston in which to hold the probate court of Norfolk County in certain cases.
- CHAPTER 325.—An act relative to the manufacture and sale of textile fabrics and papers containing arsenic.
- CHAPTER 326.—An act to establish the office of clerk of the third district court of Southern Worcester,—so far as it relates to salary.
- CHAPTER 327.—An act to provide for establishing fixed hours for the recording of papers in registries of deeds.
- CHAPTER 328.—An act to establish the salary of the assistant register of probate and insolvency for the county of Essex.
- CHAPTER 329.—An act to establish the salary of the second assistant clerk of courts for the county of Essex.
- CHAPTER 330.—An act to establish the salary of the clerk of the municipal court of the Roxbury district of the city of Boston.
- CHAPTER 331.—An act to establish the salary of the assistant clerk of the municipal court of the Roxbury district of the city of Boston.
- CHAPTER 332.—An act to establish the salary of the assistant clerk of the first district court of Eastern Middlesex.
- CHAPTER 333.—An act to change the name of the state almshouse.
- CHAPTER 334.—An act to regulate the width of tires on draft wagons.
- SECTION 1 of CHAPTER 335.—An act to provide for the protection of human life in the case of fire or panic.
- CHAPTER 339.—An act to regulate the size of berry baskets.
- CHAPTER 344.—An act relative to the construction of fishways by the commissioners on inland fisheries and game.
- CHAPTER 345.—An act relative to temporary guardians.
- CHAPTER 347.—An act to establish the salary of the assistant register of probate and insolvency for the county of Middlesex.
- CHAPTER 350.—An act relative to the commitment of insane persons to insane asylums.
- CHAPTER 352.—An act to establish the rank of the commissary general.
- CHAPTER 353.—An act to establish the rank of the judge-advocate general.
- CHAPTER 354.—An act relative to registering and confirming titles to land.
- CHAPTER 357.—An act relative to the hours of labor for city and town employees.
- CHAPTER 359.—An act to protect milk dealers and consumers against the unlawful use and destruction of milk cans and other receptacles.
- CHAPTER 363.—An act relative to life insurance.
- CHAPTER 368.—An act relative to the work of the dairy bureau of the state board of agriculture.
- CHAPTER 369.—An act relative to the sealing of bottles and cans used by milkmen.
- CHAPTER 371.—An act to provide for the collection of collateral legacy taxes in certain cases.
- CHAPTER 372.—An act relative to appeals and exceptions at common law and in equity.
- CHAPTER 373.—An act to provide for the appearance of the attorney-general before committees of the general court in certain cases.
- CHAPTER 374.—An act relative to naturalization.
- CHAPTER 376.—An act relative to the sale of real estate for the payment of taxes.
- CHAPTER 378.—An act relative to the hours of labor of women and minors in mercantile establishments.
- CHAPTER 379.—An act to provide for the better protection and to regulate the sale of game birds.
- CHAPTER 381.—An act to authorize receivers to sell the property, locations and franchises of street railway companies.
- CHAPTER 383.—An act to establish the salaries of the first and second clerks in the office of the secretary of the commonwealth.
- CHAPTER 384.—An act to establish the salary of the justice of the third district court of Bristol.
- CHAPTER 385.—An act to establish the salaries of the justices of the supreme judicial court and of the superior court.
- CHAPTER 386.—An act relative to printing certain parts of the annual report of the insurance commissioner.
- CHAPTER 395.—An act relative to railroad fares in the suburban district of Boston.
- CHAPTER 397.—An act to provide for the care and maintenance of indigent and neglected children.
- CHAPTER 398.—An act relative to interest to be paid by corporations to the commonwealth on overdue taxes.
- CHAPTER 399.—An act relative to the limit of the municipal debt and the rate of taxation in the city of Boston.
- SECTION 6 of CHAPTER 400.—An act to abolish the police court of Gloucester and to establish the district court of Eastern Essex.
- CHAPTER 404.—An act relative to contracts between cities and towns and the Massachusetts highway commission for the construction of state highways.
- CHAPTER 406.—An act to establish the salaries of the railroad commissioners.
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HOUSE OF REPRESENTATIVES, November 21, 1901.

Passed to be enacted. JAMES J. MYERS, *Speaker*.

IN SENATE, November 21, 1901.

Passed to be enacted. RUFUS A. SOULE, *President*.

NOVEMBER 21, 1901.

Approved.

W. MURRAY CRANE.

THE
INDEX

TO THE
REVISED LAWS
OF

The Commonwealth of Massachusetts.



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INTRODUCTORY NOTE.

The Index to the Revised Laws of Massachusetts has been prepared by the undersigned, who, on July 9, 1901, was chosen for that purpose by the Joint Special Legislative Committee on the Consolidating and Arranging of the Public Statutes.

CHARLES N. HARRIS.

BOSTON, October, 1902.

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